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In The
# Supreme Court of the United States

STEPHEN STARK,

*Petitioner,*

v.

THE STATE OF TEXAS,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI


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## QUESTIONS PRESENTED

Question Number One: Whether the AEDPA's One-Year Statute of Limitations applies to Petitioner's State Habeas Petition, which was timely filed under Texas Law.

Question Number Two: Whether Texas' Sex Offender Registry Requirements, imposed post-conviction and for life, violate Petitioner's right to Substantive and Procedural Due Process.

Question Number Three: Whether Texas Sex Offender Registry Requirements violate Petitioner's Right to Equal Protection.

Question Number Four: Whether Texas Sex Offender Registry laws, as applied to Petitioner, are Ex Post Facto violations.

## PARTIES TO THE PROCEEDING

*Petitioner*

Petitioner is Stephen Stark, an individual citizen of the United States, residing in the Southern District of Texas. Petitioner has no corporate affiliations. Stephen Stark was the Petitioner in the United States District Court, and the Appellant before the Fifth Circuit Court of Appeals.

*Respondents*

The State of Texas is a sovereign state of these United States and as such has imposed conditions of "confinement" on Petitioner that were the subject of Petitioner's application for a certificate of appealability and his habeas corpus petition.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Fifth Circuit Court of Appeals in this case.

## OPINIONS BELOW

On January 23, 2007, the Fifth Circuit issued an opinion on Petitioner's application for a certificate of appealability (COA) to appeal the district court's order dismissing his 28 U.S.C. § 2254 petition wherein the Court found the petition was barred by a one-year statute of limitations under 28 U.S.C. § 2244(d). The Fifth Circuit affirmed the district court's finding (App. 1, Fifth Circuit Opinion; App. 3, district court's finding).

The opinions and orders of the United States District Court for the Southern District of Texas, Houston Division, No. 4:05-CV-4310, was not reported. The opinion of the Fifth Circuit, No. 06-20280, was not reported.

## STATEMENT OF JURISDICTION

The most recent judgment of the Fifth Circuit Court of Appeals in this case was entered on January 23, 2007. *Id.* The Fifth Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 2253(c) and Fed.R.App.P. 22(b). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(d)(1) provides that:

> [a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation shall run from the latest of –

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for such review[.]

28 U.S.C. § 2244(d)(2) states:

> [t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law[.]"

The Fourteenth Amendment to the United States Constitution states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."; the Fourteenth Amendment also stipulates that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Article I Section 9 of the United States Constitution states in pertinent part that: "[n]o Bill of Attainder or ex post facto Law shall be passed"; Section 10 says in part that: "[n]o State shall . . . pass any Bill of Attainder, ex post facto Law. . . ."

Chapter 62 of the Texas Code of Criminal Procedure is attached in its textual entirety at Petitioner's Appendix at 19; cites for all states' sex offender registry laws are attached at Petitioner's Appendix at 88.

## STATEMENT OF THE CASE

### a. Procedural History

On March 23, 1995, Petitioner entered a plea of nolo contendere on one count of indecency with a child and was placed on five years' deferred adjudication (Order Deferring Further Proceedings and Placing Defendant on Community Supervision, App. at 220). Petitioner fulfilled the conditions of probation, his probationary period was

terminated, and he was discharged according to law in 2000. Pursuant to the law in effect at the time of his plea, the terms of Petitioner's probation did not include any requirement as to notification or registration as a sex offender. *Id.*

The College Station Police Department Offender Compliance Unit, after Petitioner's discharge, contacted Petitioner to inform him that effective September 1, 1999, under Article 62.06 Subsection (b) of the Texas Code of Criminal Procedure, Petitioner would be required to verify annual registration (App. at 219). The State's notice made clear that the failure to verify annual resignation would be deemed a felony offense. *Id.*

Petitioner's application for a writ of habeas corpus was filed in the 85th Judicial District Court of Brazos County, Texas, on April 22, 2005 (App. at 185). Petitioner alleged violations of his right to substantive and procedural due process.[1] The State of Texas filed its response on or about May 24, 2005 (App. at 168).

On June 13, 2005, the district court denied the application, finding as follows:

> 1. [a]pplicant has alleged no fact supported by the record which entitles him to relief. 2. Applicant's grounds for relief have no basis in the record and are completely without merit. 3. There are no previously unresolved, controverted issues of fact material to the legality of applicant's alleged disability. (App. at 166).

The district court's order was transmitted to the Texas Court of Criminal Appeals. *Id.* On July 27, 2005, the Texas Court of Criminal Appeals dismissed the application, stating that: "[t]he Court has dismissed your application

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[1] Although Petitioner's original application framed the issue as "Ex Post Facto, Equal Protection, Substantive Due Process" (App. at 194), the application also addressed Petitioner's allegation of a procedural due process violation. App. at 199.

for a writ of habeas corpus without written order; on the date the application was filed, community supervision had not been revoked. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 1, 3(a)-(b)." (App. at 165).

On December 21, 2005, Petitioner filed an Application for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, in the United States District Court for the Southern District of Texas, Houston Division. (App. at 143). Petitioner asserted that the registry requirement was an ex post facto violation, and also that his rights to substantive and procedural due process and equal protection had been violated. (App. at 143). Petitioner further asserted that the restraints on his liberty effected by the registry requirements were sufficient to satisfy the 'in custody' requirement for habeas writs under federal law. *Id.*

The federal district court dismissed Petitioner's case on February 28, 2006 (App. at 3), finding that Petitioner was subject to a one-year statute of limitations under the Antiterrorism and Effective Death Penalty Act, which governs habeas corpus petitions filed after April 24, 1996. App. at 5.

The court found that the one-year statute of limitations on federal habeas petitions, under the Antiterrorism and Effective Death Penalty Act,[2] rendered the petition untimely. *Id.* The court also found that Stark's claims were without merit[3] (*id.* at 7-13), and declined to issue a Certificate of Appealability (*id.* at 13-15).

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[2] ("AEDPA"), 28 U.S.C. § 2244(d); Pub. L. No. 104-132, 110 Stat. 1214 (1996); the federal district court noted that the AEDPA governs habeas corpus petitions filed after April 24, 1996.

[3] The federal district court noted that Stark had failed to present his claim of procedural due process violations at the state court level (App. at 5); Stark did in fact present the claim to the state district court (*see* footnote 1, *infra*).

On June 19, 2006, Petitioner submitted an Application for Certificate of Appealability ("COA") with Brief in Support to the Fifth Circuit Court of Appeals. Petitioner reasserted his claims of equal protection, due process, and ex post facto violations. Petitioner also argued that the AEDPA's one-year statute did not bar his petition.

The Fifth Circuit denied Petitioner's application on January 23, 2007. (App. at 1). The Fifth Circuit explained that a COA should issue only when the applicant has made "a substantial showing of the denial of a constitutional right." *Id.* The court further explained that, when a district court's denial of a petition for habeas corpus is based upon a procedural issue such as limitation, the COA should only issue if the petitioner demonstrates that reasonable jurists could debate the issue of whether the district court's procedural ruling was correct. *Id.* The court avoided Stark's substantive contentions, writing that:

> Stark argues that the district court misapplied the one-year limitations provision because the period allegedly did not begin to run until his state postconviction application was denied by the Texas Court of Criminal Appeals. Because Stark has not shown that jurists of reason would find it debatable whether the district court was correct in its procedural ruling, his COA application is denied.

**b. Factual History**[4]

Dr. Stephen Stark, Petitioner herein, recently retired from his position at Texas A&M University in College Station, Texas; Petitioner was a full professor in the University's Education Administration department. Dr. Stark worked for Texas A&M for thirty-four years and received Emeritus status in 2006. The charge entered in the underlying cause represents the totality of Petitioner's criminal history; Petitioner has neither been charged with nor convicted of any other crimes.

Dr. Stark and his wife have seven children. In the early nineties, when their youngest daughter was fifteen years old, Dr. and Mrs. Stark discovered that the child was dating a nineteen-year-old man. They forbad their daughter from continuing to see the man, on the grounds of age and their suspicions of the young man's criminal activities (at the time of filing of this petition, the young man in question is incarcerated). When Dr. Stark caught the two young people together, he grounded his daughter for six months.

The child then made a report to the local Child Protective Services office, alleging that her parents had physically and sexually abused her. Subsequent to an investigation, Child Protective Services determined that the charges were baseless and that they would be dropped. The officer on the case was transferred to another jurisdiction, however; the new officer persuaded the District Attorney's Office to accept the charge of indecency with a child against Dr. Stark, but did not pursue the allegation of physical abuse against Mrs. Stark.

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[4] Those facts asserted herein which are reflected in the record are cited as such; however, it should be noted that some of the facts cited have developed since the filing and denial of Petitioner's Application for Certificate of Appealability to the Fifth Circuit. Additionally, Petitioner has been unable to develop the factual record in this case due to the summary denial of his applications at both the state and federal levels.

Dr. Stark was charged with the crime of indecency with a child, pursuant to TEX. PENAL CODE 21.11(a)(1). The grand jury charge stated that Dr. Stark had touched the breast of a minor child; the indictment was filed on April 7, 1994. App. at 172-173.

With knowledge of the publicity and embarrassment that a trial would bring to his family, and with an understanding of the consequences of the plea at that time, Petitioner chose to enter a plea of nolo contendere to the charge. App. at 220. On March 23, 1995, Petitioner was placed on deferred adjudication for five years; during this time he participated in a psychological screening, community service, and two years of counseling sessions, paid restitution and fines, including all counseling fees, and registered with local law enforcement. App. at 220. Petitioner fulfilled the conditions of probation, his probationary period was terminated, and he was discharged according to law in 2000.

In February of 2000, Petitioner received notice that he was required to register as a sex offender with local law enforcement authorities; the notice stated that failure to register would result in a felony charge. App. at 219. The following information is now published on a publicly accessible internet website: Petitioner's photograph; address; place of employment; height; weight; shoe size; the charge that was entered and the sentence; and other information. Petitioner's information was also published on the University's website, prompting several protests from students.

Petitioner has been visited at his home by law enforcement authorities on different occasions; Petitioner opted to take an earlier retirement from Texas A&M than he had originally intended, due to the fact that several protests had been made to the administration regarding Petitioner's status as a sex offender; Petitioner retired in 2006.

After Petitioner retired, he continued to volunteer time at the University in order to maintain supervision of twenty-three students' work on their doctoral dissertations. During one counseling session with a doctoral student, however, University police interrupted and escorted Dr. Stark from the campus; the campus police informed Dr. Stark that he would need to notify them and obtain an escort, prior to entering the campus, due to his status as a registered sex offender. Dr. Stark was obligated to notify his doctoral students, by letter, that he would not be able to continue supervision of their work.

Local police often visit Petitioner's home unannounced; for instance, on Halloween night 2006, police visited Dr. Stark's home and inquired as to what his whereabouts would be for the remainder of the evening. Dr. Stark's family and grandchildren were present in his home at the time. Dr. Stark's name and identifying information are posted on a bulletin board at the local elementary school; his grandchildren attend school there.

Petitioner's status as a registered sex offender also affects his ability to travel; Petitioner is retired, but he must take into account that he is required to register with local law enforcement authorities in any location where he stays longer than seven days. Although Petitioner values public service, he is unable, and unwilling in some cases due to the risk of humiliation, to participate in many community service and volunteer activities.

Dr. Stark traveled to Bolivia in 2004 and 2006, to supervise in the construction of a house which he had funded as a college graduation gift to a Bolivian orphan (Dr. Stark had also paid college tuition and fees for the young man, who is now thirty years old). Upon returning to the United States, while going through customs, Dr. Stark's passport alerted customs agents to his status as a registered sex offender. On both occasions, Dr. Stark was pulled from the line and detained for interviews by agents; the agents accused Dr. Stark of traveling abroad in order to molest children. Dr. Stark was subjected to similar

questioning upon returning to the United States from Canada in 2005.

## REASONS FOR GRANTING THE WRIT

### I. Whether the AEDPA's One-Year Statute of Limitations applies to Petitioner's State Habeas Petition, which was timely filed under Texas Law.

The federal district court stated that Petitioner was subject to a one-year statute of limitations under the Antiterrorism and Effective Death Penalty Act, which governs habeas corpus petitions filed after April 24, 1996 (App. at 5-6). According to the district court, this limitations period tolled from February 3, 2000, which was the date that Appellant received his notice of registration requirements from the College Station Police Department (App. at 6).

This Court, in *Carey v. Saffold*, 536 U.S. 214, 222 (2002), explained the "pending" allowance of § 2244 ("[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection") as follows: "'[i]t modifies the 1-year filing rule (a rule that prevents prisoners from delaying their federal filing) in order to give States the opportunity to complete one full round of review, free of federal interference.'"

The *Carey* Court explained that, so long as the habeas petition is filed timely according to state law, the one-year limitations period is suspended for purposes of the AEDPA and 28 U.S.C. § 2244. To apply any other interpretation "would lead to great uncertainty in the federal courts, requiring them to contend with habeas petitions that are in one sense unlawful (because the claims have not been exhausted) but in another sense required by law (because they would otherwise be barred by the one-year statute of limitations)." *Carey v. Saffold*, 536 U.S. at 220.

Stark's petition was filed timely according to state law.[5] Stark's state law claims were not exhausted until the Texas Court of Criminal Appeals ruled on his Application for a Writ of Habeas Corpus (App. at 165). The Court of Criminal Appeals' ruling was issued on July 30, 2005; the one-year statute of limitations under the AEDPA, pursuant to the *Carey* Court's analysis, should have begun to run on July 30, 2005 (*id.*).

There is disagreement amongst various state and circuit courts on the issue of whether the AEDPA's one-year limitations rule applies to state habeas petitions; essentially, a disagreement exists as to the nature of the AEDPA's term "pending." In *Carey v. Saffold*, 536 U.S. at 219, 220, explained that "an application is pending as long as the ordinary state collateral review process is 'in continuance' – i.e. 'until the completion of' that process. In other words, until the application has received final resolution through the State's post-conviction procedures, by definition it remains 'pending'."

The Fifth Circuit, however, has repeatedly held that a state habeas petition is only "pending," for purposes of tolling the AEDPA's one-year period, either during the time of a direct appeal from the judgment or after a state habeas petition has been filed, regardless of whether a state habeas petition is timely under state law.[6] In *Flanagan v. Johnson*, 154 F.3d at 199, the Fifth Circuit explained that:

> [t]he mere existence of an application for state habeas relief does not, as the parties' stipulation suggests, prevent the one year period of limitation from beginning until the state application is finally decided. Rather, § 2244(d)(2) provides that

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[5] Texas law does not contain a limitation period for filing of state habeas petitions (TEX. CODE CRIM. PROC., Art. 11.01 *et seq.*).

[6] *Scott v. Johnson*, 227 F.3d 260 (5th Cir. 2000); *Coleman v. Johnson*, 184 F.3d 398 (5th Cir. 1999); *Flanagan v. Johnson*, 154 F.3d 196 (5th Cir. 1998).

> the period during which a properly filed state habeas application is pending must be excluded when calculating the one year period. Under the plain language of the statute, any time that passed between the time that [Petitioner's] conviction became final and the time that his state application for habeas corpus was filed must be counted against the one year period of limitation.

Similarly, in *Siemer v. Dretke*, 2006 WL 964530 (S.D.Tex. 2006), the Federal District Court for the Southern District of Texas held that the AEDPA limitations period barred a petitioner's federal habeas petition, notwithstanding that the state petition had been timely filed under Texas law, and that the federal petition had been filed within one year of the final denial of that petition by the state's highest criminal court. The *Siemer* court explained that the AEDPA's one-year statute of limitations began to run at the time of the expiration of the period for direct review of the judgment; the court did not address the fact that the petitioner remained on parole for approximately four years after that time (*id.* at *3). The court found that the one-year period was not tolled until the time of filing of petitioner's state habeas petition (*id.*).[7]

In *Timothy v. Davis*, 296 F.Supp.2d 1027, 1030 (E.D.Mo. 2003), the Federal District Court for the Eastern District of Missouri also held that the AEDPA's one-year period began to run at the time of expiration of the time for direct review of the judgment. The *Timothy* court, however, interpreted such period to begin at the time of

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[7] In *Siemer*, the petitioner entered a guilty plea on May 10, 1995, to charges of sexual assault of a child; petitioner was placed on deferred adjudication for a period of ten years (*id.* at *1). Petitioner's probation was revoked in 1999; petitioner was sentenced to serve twenty years in prison; a petition to challenge the underlying guilty plea, entered in 1995, was filed on December 6, 2002, and finally denied at the state level on April 27, 2005 (*id.* at *4). Petitioner filed a federal habeas petition on July 15, 2005 (*id.* at *1).

revocation of petitioner's probation (*id.*). In *Timothy*, the petitioner filed a state habeas petition 364 days after his parole was revoked, on November 22, 2000 (*id.*); the state petition was denied. The court applied the one-year limitations period and found the petition to be untimely, explaining that:

> [e]ven if the Court tolled the limitations period until [denial of the petition by the highest state court], he still had only one day to file his federal habeas petition, because 364 days had already elapsed after his probation was revoked and before he first sought state habeas corpus relief.[8]

(*Id.* at 1031). The Timothy court so held despite the fact that Missouri State law provides no limitations period. *Id.* at 1030.

The Ninth Circuit Court of Appeals has come to a different conclusion with regard to the AEDPA's one-year limitations period, holding that the one-year period does not govern habeas petitions which are timely filed under state law. *Brown v. Carey*, 75 Fed. Appx. 642 (9th Cir. 2003); *Brooks v. Fairman*, 78 Fed. Appx. 626 (9th Cir. 2003). In *Welch v. Carey*, 350 F.3d 1079 (9th Cir. 2003), the court explained in dicta that "[i]t is well-settled that the timeliness of a petition for post-conviction relief filed in state court is governed by state law." *Id.* at 1080. The *Welch* court explained that "a petitioner is normally entitled to "one full round" of collateral review in state court free of federal interference." *Id.* at 1082.[9]

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[8] In *Davis*, the petitioner's probation was revoked on November 23, 1999; the petitioner filed his state petition for a writ of habeas corpus on November 22, 2000. *Id.* at 1028, 1029. The writ was denied on November 20, 2001; the petitioner filed his Section 2254 writ approximately four months later, on March 22, 2002. *Id.* at 1029.

[9] In *Welch*, the court found that the AEDPA's one-year statute did not toll between petitioner's two successive petitions, which were brought on different grounds and which were separated by a gap in time of four years. *Id.* at 1081.

Petitioner thus submits that there is conflict amongst the courts as to interpretation of the AEDPA's limitations period. Pursuant to this Court's analysis in *Carey v. Saffold*, 536 U.S. 214, as well as the interest in protecting "principles of comity, finality, and federalism, by promoting the exhaustion of state remedies while respecting the interest in the finality of state court judgments,"[10] this Court should find that the AEDPA's one-year limitations period does not replace state law provisions regarding timeliness of filing state habeas corpus petitions.

## II. Whether Texas' Sex Offender Registry Requirements, imposed post-conviction and for life, violate Petitioner's right to Substantive and Procedural Due Process.

This Court did not speak to the issue of substantive due process in *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2002), when addressing Connecticut's sex offender registry statutes. The *Connecticut* Court did, however, imply that a substantive due process claim may have been effective in that case: "[u]nless respondent can show that that substantive rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise." It may be that respondent's claim is actually a substantive challenge to Connecticut's statute "recast in 'procedural due process' terms." *Id.* at 8, citing *Reno v. Flores*, 507 U.S. 292, 308 (1993). Justices Stevens, Scalia, Souter and Ginsberg all noted in concurring opinions that a due process challenge to Connecticut's "Megan's Law" would properly be asserted as a substantive, rather than procedural, claim. *Id.*

The Due Process Clause protects fundamental liberty interests; these liberty interests encompass more than freedom from bodily restraint. *Washington v. Glucksberg*,

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[10] *Welch v. Carey*, 350 F.3d 1079, 1082 (9th Cir. 2003).

521 U.S. 702, 117 S.Ct. 2258, 2267-2268 (1997). The Clause provides heightened protection from any governmental interference with these rights. *Id.* A substantive due process analysis requires careful description of a protected liberty interest; any infringement on a fundamental liberty interest requires that the governmental interference be narrowly tailored and serve a compelling state interest. *Id.*

The right to privacy, the right to freedom from bodily restraint, and the right to travel have long been recognized as fundamental and protected by the United States Constitution.[11] All of these rights have been infringed upon in the instant case.

Petitioner's right to privacy is infringed upon by the Texas sex offender registry statute by virtue of the fact that his personal information is published on a publicly accessible website.[12] The Texas statute also requires Petitioner to register with local law enforcement officials in any location to which he travels and intends to remain for a period of longer than seven days (TEX. CODE CRIM. PROC. Art. 62.051); this encroaches on Petitioner's right to travel. Petitioner is also subject to restraint by virtue of his duty to update his registry on a regular basis. *Id.*

Assuming that the compelling state interest in this case is public safety (protecting the public from the danger of recidivism by convicted sex offenders), the means by which this interest is achieved must be narrowly tailored.

Texas has no system in place which evaluates the likelihood that offenders will recidivate; instead, the statute issues a blanket requirement that all offenders

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[11] *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986); *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494 (1977).

[12] Petitioner's name, address, and various personal information may be located at the following web address: https://records.txdps.state.tx.us/DPS_WEB/Sor/index.aspx (last visited April 20, 2007).

register for life.[13] The Texas statute is not narrowly tailored; less restrictive means are available. New Jersey's statutory scheme, for instance, requires sex offenders' risk level to be evaluated and the subsequent dissemination of information and duration of registry requirements tailored accordingly (New Jersey law discussed in *Artway v. Attorney Gen.*, 81 F.3d 1235 (3rd Cir. 1996), reh'g den.; also discussed herein, infra). Thus, in New Jersey, where protection of the public from recidivism is at issue, such is achieved by requiring registry of those offenders who are at risk of recidivating. Texas law, however, offers no such attempt at congruence between means and end. The infringements on Petitioner's fundamental liberty interests operate as a violation of Petitioner's substantive due process rights.

Defendant is also denied his right to procedural due process because the statute does not create a means by which Defendant can carve an exception to the strict contours of the lifetime reporting requirement imposed by the statute, although exceptions to lifetime reporting requirements are allowed for young offenders and for those who committed offenses prior to 1970. Such restrictions deny Defendant his right to procedural due process under the Texas Constitution (Article 1, Section 10, Texas Constitution) and the United States Constitution.[14]

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[13] Texas' statute provides that those convicted of certain crimes must register for life, and that all others are subject to a ten-year registry requirement (TEX. CODE CRIM. PROC. Art. 62.101); in practical terms, however, pursuant to the definitions of offenses (TEX. CODE CRIM. PROC. Art. 62.001) all offenses involving minor children require lifetime registration, with an exception only for juvenile offenders (Art. 62.101(5)(b)) and for those offenses committed prior to 1970 (Art. 62.002(a)).

[14] The State of Texas obviously anticipated this argument, amending the registry statutes in 2005 (after Petitioner's filing of his original state application) (TEX. CODE CRIM. PROC. Articles 62.402-62.408); however, the amendment is devoid of any effect.

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The registry statutes, as amended, require the state to compile a list of all offenses for which the Texas registry term exceeds the federal registry term, as dictated by the Jacob Wetterling Act (Art. 62.402); the amendment provides that the state shall provide an individualized assessment of risk of recidivism (Art. 62.403). The registrant may then petition the court for early termination of registry requirements (Art. 62.404). The petition must contain two types of documentation: certification that the petitioner's offense qualifies (as an offense for which the federal registry term exceeds the Texas registry term, under Art. 62.402) and "a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.403." Art. 62.404.

Petitioner's offense falls under the list published by the Texas Council on Sex Offender Treatment, pursuant to 62.402 (Petitioner's offense was under 21.11(a)(1) of the Texas Penal Code; *see* website of Texas Council on Sex Offender Treatment at http://www.dshs.state.tx.us/csot/csot_sodregis.shtm (last visited April 21, 2007)). Petitioner should thus be able to petition Brazos County for termination of his registry requirements. The law passed by the Texas Legislature in 2005 has no effect, however, Petitioner is unable to petition the court for deregistration without an individualized risk assessment, but the State of Texas has failed to provide an assessment tool. The Council's website reads that:

> [i]n October 2005, the Council began its Dynamic Risk Assessment Research project. The goal of this project is to collect research data from a variety of risk assessment tools which in turn can be used when considering deregistration issues. While the Council's research project is well underway, **deregistration as contemplated by the Legislature under H.B. 867 will not occur immediately**. On July 2006, the President signed into law House Resolution 4476 (Adam Walsh Act) pertaining to sex offender registration. This broadened sex offender registration nationally and impacted the above referenced offenses from consideration for deregistration under Texas law. The Adam Walsh Act does allow Tiered 1 offenders to potentially deregister after 10 years, and Tiered 3 offenders to deregister after 25 years with a clean record and having completed sex offender treatment. There is no deregistration for Tiered II offenders who must register for 25 years.
>
> H.B. 867 cannot be implemented until the Council's research has been completed to statistically support the assessment tool(s) utilized in determining a sex offender's risk to the community and the administrative rules promulgated. Upon concluding the research project and pursuant

(Continued on following page)

## III. Whether Texas Sex Offender Registry Requirements violate Petitioner's Right to Equal Protection.

Justice O'Connor's concurring opinion in *Texas v. Lawrence*, 539 U.S. 558, 579 (2003), provided an effective analysis of the Fourteenth Amendment's Equal Protection clause. The Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike." Under rational basis review, a statute will be upheld if the classification drawn by the statute is rationally related to a legitimate state interest. *See id.*

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> to Article 62.403(b)(1-2), the Council shall evaluate the person using the individual risk assessment tool or group of individual risk assessment tools and provide to the person a written report detailing the outcome of the evaluation conducted. Under Art. 62.404, that person may then file with the sentencing trial court a petition for early termination of his/her obligation to register. **There remains an enormous amount of work to be completed by the Council before this process can be implemented in Texas**, not to mention the possibility of a federal law negating the Council's work altogether.
>
> Please know that the Council takes this responsibility very seriously and is working diligently and expeditiously to complete the project with the goal of allowing individuals **the potential opportunity to seek deregistration at some later date**.

[emphasis added].

Thus, although the legislature passed the exception in 2005 and at the time of filing of this petition it is 2007, there is no foreseeable date upon which Petitioner herein will be able to exercise his statutory right to petition the Brazos County Court for termination of registry, rendering the statutory exception impotent for purposes of Petitioner's arguments herein. In addition, although the Texas Council on Sex Offender Treatment has gone to great lengths to justify their delay, including citing to the recent passage of the Adam Walsh Act, it should be noted that the Petitioner's offense herein is not implicated by the Adam Walsh Act. As a final note, the State of Texas' reasoning, in addition to being alarmingly speculative, is misleading; the State has been required to have a risk assessment mechanism in place since at least January 1, 2000, under old Article 62.035 (*see* reference at App. 210).

### A. Whether Petitioner's Right to Equal Protection is implicated by Widely Variant State Law Schemes.

In *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 7-8 (2002), Justices Souter and Ginsburg, in a concurring opinion, explained that:

> [t]he line drawn by the legislature between offenders who are sensibly considered eligible to seek discretionary relief from the courts and those who are not is, like all legislative choices affecting individual rights, open to challenge under the Equal Protection Clause. The refusal to allow even the possibility of relief to, say, a 19-year-old who has consensual intercourse with a minor aged 16 is therefore a reviewable legislative determination. Today's case is no occasion to speak either to the possible merits of such a challenge or the standard of scrutiny that might be in order when considering it. I merely note that the Court's rejection of respondents' procedural due process claim does not immunize publication schemes like Connecticut's from an equal protection challenge.

[Internal citations omitted].

In *Smith v. Doe*, 538 U.S. 84, the opinion of the Court was delivered by Justice Kennedy. The Smith decision concerned a challenge to the Alaska statute, which contained two components: a registration requirement and a notification system. *Id.* at 1145.

In context of Alaska's statutory provision for criminal prosecution in the instance of a failure to register, Justice Kennedy explained that the statute was not in violation of the ex post facto clause, but noted that:

> [w]hether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion.

*Id.* at 1152.

The Alaska statute, unlike Texas' registry statutes, differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense for purposes of duration of registration. Petitioner in the instant case was not convicted of multiple offenses.

In addition, for purposes of examining the Texas law in comparison to Alaska law in the context of the Court's analysis and duration of registry requirements for aggravated versus non-aggravated offenses, an important point is that Petitioner's offense (indecency with a child, TEX. Penal Code § 21.11) is classified under Texas' statutory scheme as a "sexually violent offense." TEX. CODE CRIM. PROC. art. 62.001(6)(A).[15]

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[15] The offense of "indecency with a child" is defined under the Texas statute as follows:

> "(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:
>
> (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
>
> (2) with intent to arouse or gratify the sexual desire of any person:
>
> (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or
>
> (B) causes the child to expose the child's anus or any part of the child's genitals. (b) It is an affirmative defense to prosecution under this section that the actor:
>
> (1) was not more than three years older than the victim and of the opposite sex;
>
> (2) did not use duress, force, or a threat against the victim at the time of the offense; and
>
> (3) at the time of the offense:
>
> (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
>
> (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(Continued on following page)

The statute does not on its face require the element of violence or threat of violence. Connecticut's definition of "sexually violent offense" requires forced sexual intercourse and violence or threat. CONN. GEN. STAT. ANN. § 54-250. Alaska's statutes do not define sex offenses as "violent" but use the term "aggravated." Alaska's aggravated offenses are, like Connecticut's sexually violent offenses, essentially definitions of rape; that is, they require sexual intercourse induced by force, violence, or threat thereof. ALASKA ST § 12.63.100.[16]

The difference between Texas' sex offender registry law and the laws of Alaska and Connecticut is thus not only that Alaska and Connecticut allow for termination of registration after fifteen (15) and ten (10) years, respectively, for non-aggravated and nonviolent offenses, but that they define aggravated and violent offenses differently. That is, under either the Alaska or Connecticut statutory scheme, Petitioner in the instant case would not be classified as a violent or aggravated offender. It is apparent that the definition of the charge to which Petitioner pled nolo contendere does not contain any element of violence; yet it is classified as a "sexually violent offense" under Texas law. Petitioner is treated differently

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(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person. (d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree."

*Id.*

[16] Petitioner's action at issue in the underlying charge, as described in the Grand Jury Indictment, did not involve any violence or threat of violence, but was described as "touching the breast of C.S., a child younger than 17 years[.]" App. at 172-173.

than similarly situated individuals under different state law schemes; it thus seems misguided to use the constitutional analyses which have been used to examine substantially and materially dissimilar statutory schemes.

Federal law also defines "sexually violent offense" at 42 U.S.C. § 14071(a)(3)(B) ("Jacob Wetterling Act"); this section defines the term by reference to 18 U.S.C. §§ 2241, 2242, which both reference use of force, threat, or duress (although § 2242 does contain a clause for offenses with persons who are "incapable of appraising the nature of the conduct; or physically incapable of declining participation"). The Act, however, requires only ten years' registration for any sexually violent offense (42 U.S.C. § 14071(a)(1)(A); 42 U.S.C. § 14071(b)(6)(A)). Such registration period is calculated from the time at which the offender is released or placed on parole, supervised release, or probation. *Id.* Thus, although the Act may contain a more inclusive definition of "sexually violent offense" than the state law schemes, this inclusion has relatively little effect, as it does not impose lifetime registry requirements.

The Jacob Wetterling Act does impose a lifetime registration requirement, however, upon those individuals who have been convicted of multiple offenses or who have been found to be a "sexually violent predator." Appellant meets neither of these definitions under the Act ("[t]he term 'sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses[.]" *Id.* at (a)(3)(B); no such determination has been made with regard to Petitioner, as required by the Act (*id.* at (a)(2)). Under the Federal Act, Petitioner's registry requirements would have terminated in 2005 (ten years from March 23, 1995: Order Deferring Further Proceedings and Placing Defendant on Community Supervision attached, App. at 220).

Additionally, most states allow for termination of registration after a period of years, with the exception of exacerbated offenses, the definition of which would not apply to Appellant here. Thus, in most states, Petitioner would be eligible for termination of registry requirements.

For instance, in *Artway v. Attorney Gen.*, 81 F.3d 1235 (3rd Cir. 1996), reh'g den., the appellate court discussed New Jersey's sex offender registration scheme. New Jersey was the state of residence of seven-year-old Megan Kanka, who was raped and murdered by a known sex offender who lived next door, and for whom "Megan's Law" is named.

New Jersey's registration statute requires that offenders must register "only if, at the time of sentencing, their conduct was found to be characterized by a pattern of repetitive and compulsive behavior" (*id.* at 1243, citing N.J.S.A. 2C:7-2b(1)). An offender's risk of recidivism is assessed, and notification is effected accordingly. In other words, an individual with a low risk of re-offense need only notify law enforcement; the information is not disseminated to anyone other than law enforcement officials. (*Id.* at 1244). An intermediate risk level requires notification of organizations in the community which support or care for children, battered women, or rape victims; neither intermediate nor low-risk offenders' registration information is available for public inspection. *Id.* A high risk level requires notification of community members. *Id.* Risk levels are assessed after application of a multifaceted test, promulgated by the Attorney General. *Id.*

In most states, registry requirements are subject to termination after a period of years. (*See* App. at 88 (cites for all state registry statutes)). Even of those states which do possess lifetime registry requirements, most only require such of multiple or repeat offenders, or those whose offenses involved violence. Only California, Florida, Oregon, South Dakota and Texas require lifetime registry of all adult offenders. *Id.*

Had Appellant resided in any one of the other forty-five states at the time of his initial plea, his registry

requirements could have been completed several years ago, or would be near termination. *Id.* Similarly situated individuals (convicted of substantially similar offenses) are subjected to differing treatment based on different states' statutory schemes. *Id.* The subsequent application, therefore, of conclusions of law with regard to ex post facto and due process violations, which are based upon a statutory scheme that is fundamentally dissimilar from that law to which the Appellant is subjected, violates Petitioner's right to equal protection under the United States Constitution.

### B. Whether Petitioner's Right to Equal Protection Is Implicated Under Texas Law.

If, for purposes of the similarly situated facet of the Equal Protection analysis, Petitioner may be said to be similarly situated only to those offenders whose conviction occurred in the State of Texas, then Petitioner's right to Equal Protection is violated by the Texas Statute. The statute excludes from registry requirements those who were convicted before 1970, as well as young offenders.

Petitioner is treated unfavorably by the statute on its face in comparison to similarly situated individuals. Sex offenders who were convicted before 1970 are not subject to registry requirements. Said offenders may still be relatively young; for instance, hypothetically, an offender who was twenty (20) years of age in 1969 would now be approximately fifty-eight (58) years of age. Such an offender's age would presumably not prevent him or her from a repeated offense; in *Smith v. Doe*, 538 U.S. 84, this Court noted that "[e]mpirical research on child molesters, for instance, has shown that, '[c]ontrary to conventional wisdom, most reoffenses do not occur within the first

several years after release,' but may occur 'as late as 20 years following release.' "[17]

Individuals whose crimes occurred prior to 1970, however, are not subjected to registry requirements, and are thus treated more favorably under the law than is Petitioner.

The Texas statute also allows for termination of registration requirements in some instances where the registrant was either a juvenile or younger than nineteen (19) at the time of the offense, and the victim was older than thirteen (13).[18] Consequently, an offender who at eighteen (18) years of age molested a thirteen (13) year old child, regardless of the nature of offense, may be allowed to terminate his or her registration requirements. Additionally, under the law as it stands, a juvenile whose case was transferred from juvenile court may terminate registration after ten (10) years.[19] Under this provision, an individual might be sixteen (16) years old and molest a three (3) year old; regardless, said individual would be able to terminate his or her registration at the termination of ten (10) years' time. The disparity in registration requirements and exemptions thus results in Petitioner's unfavorable treatment in comparison to other offenders under the statute, and does not exist by virtue of any reasonable relation to the danger of recidivism.

In *Smith v. Doe*, the Court also stated of the Alaska statute that: "[w]hile the Act does differentiate between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense, these broad categories and the reporting requirement's corresponding length are reasonably related to the danger

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[17] Citing to National Institute of Justice, R. Prentky, R. Knight, & A. Lee, U.S. Dept. of Justice, Child Sexual Molestation: Research Issues 14 (1997).

[18] *See* TEX. CODE CRIM. PROC. Art. 62.101.

[19] TEX. CODE CRIM. PROC. Art. 62.101(5)(b).

of recidivism, and this is consistent with the regulatory objective." *Id.* at 1144.

Conversely in the case at bar, there exists no reasonable relationship between the danger of recidivism and the corresponding length of the reporting requirement. No exceptions are made under the Texas statute for the Petitioner herein; Petitioner entered a plea to a single, nonaggravated offense. A lifetime reporting requirement is not reasonably related to the danger of Petitioner's recidivism, and thus cannot be said to be consistent with the regulatory objective of the statute.

Protecting the public from the dangers of recidivism by sex offenders is presumably the purpose of Texas' registry statute.[20] The statute does not, however, mandate any evaluation of the probability that an offender will re-offend prior to imposition of registry requirements. Extensive empirical evidence now demonstrates that sex

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[20] For a pertinent policy discussion of the nature of legislative enactments which arise out of particularly atrocious crimes, *see* Finkel, Norman J., *Moral Monsters and Patriot Acts*, 12 Georgetown Psychol. Pub. Pol'y & L.J. 242, 243, 254-255 (2006); *also see* Justice Holmes' dissenting opinion (cited *id.*) in *Northern Securities Co. v. United States*, 193 U.S. 197, 24 S.Ct. 436, 468 (1904):

> [g]reat cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend. What we have to do in this case is to find the meaning of some not very difficult words. We must try, – I have tried, – to do it with the same freedom of natural and spontaneous interpretation that one would be sure of if the same question arose upon an indictment for a similar act which excited no public attention, and was of importance only to a prisoner before the court.

offenders can control their impulses and change their behaviors, despite the common perception to the contrary.[21]

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[21] People's fears intensify greatly in the case of pedophiles [. . . .] people see the moral monster. These moral monsters have been demonized, stigmatized, and viewed as an undifferentiated group, invariant in their desires and behaviors. This invariant portrayal, however, contradicts what has always been found in psychological research, where variance is a surety on scatter plots; it also contradicts what is found within all psychiatric disorder categories, where variance is a constant. Despite this variance, citizens, politicians, and related TV shows (e.g., Law & Order: Special Victims Unit; Wolf, 1999) frequently claim that these moral monsters have the highest recidivism rates, recidivate more frequently, cannot control their impulses, and cannot change – even though a now large body of empirical findings has shown these claims to be myths.

Norman J. Finkel, *Moral Monsters and Patriot Acts*, 12 Georgetown Psychol. Pub. Pol'y & L.J. 242, 254-255 (2006), citing Freeman-Longo, R.E., *Feel Good Legislation: Prevention or Calamity,* Child Abuse and Neglect, 20, 95-101 (1996); Hanson, R.K., *What do we know about Sex Offender Risk Assessment?*, Psychology, Public Policy, and Law, 4, 50-72 (1998); Herbert, J.E., *Casenote, State ex rel. Oiveiri v. State: the Scarlet Letter of Protection – a Constitutional Analysis of Louisiana's Megan's Law Statutes*, 48 Loyola Law Review 327-352 (2002); Kersting, K., *New Hope for Sex Offender treatment,* 34(7) Monitor on Psychology, 52-54 (2003, July/August); Petrosino, A.J., & Petrosino, C., *The public safety potential of Megan's Law in Massachusetts: An assessment from a sample of criminal sexual psychopaths*, 45 Crime and Delinquency, 140-158 (1999); Prentky, R.A., Lee, A.F.S., Knight, R.A., & Cerce, D., *Recidivism rates among child molesters and rapists: A methodological analysis*, 21 Law and Human Behavior, 635-659 (1997); Winick, B.J., *Sex offender law in the 1990s: A therapeutic jurisprudence analysis*, 4 Psychology, Public Policy, and Law, 505-570 (1998); Zevitz, R.G., & Farkas, M.A., *Sex offender community notification: Managing high risk criminals or exacting further vengeance?,* 18 Behavioral Sciences and the Law, 375-391 (2000).

## IV. Whether Texas Sex Offender Registry laws, as applied to Petitioner, are Ex Post Facto violations.

According to the U.S. Constitution's Article I Sections 9 and 10, neither the federal government nor the state governments are to pass an ex post facto law. This Court subsequently defined the term "ex post facto law" as: "[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed[.]" *Calder v. Bull*, 3 U.S. 386, 390 (1798). The qualifiers disallowing ex post facto laws provide absolute exclusion: "[n]o bill of attainder or ex post facto law shall be passed" and "[n]o State shall .... pass any Bill of Attainder, ex post facto law...." U.S. Const. Art. I, Sec. 9, 10 [emphasis added].[22]

A law violates the ex post facto prohibition when it retrospectively applies additional punishment for an act. *Weaver v. Graham*, 450 U.S. 24, 28 (1981). A determination of whether a law imposes additional punishment requires an assessment of 1) whether the legislature intended that the additional requirement be punitive; and 2) whether the requirement has such a punitive effect that the statute cannot be legitimately viewed as civil or regulatory in nature. *United States v. Ursery*, 518 U.S. 267, 288 (1996). When the legislature has not deemed a regulation to be punitive, a statute's punitive effect may be demonstrated

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[22] Thomas Jefferson stated that:

> "[t]he sentiment that *ex post facto* laws are against natural right, is so strong in the United States, that few, if any, of the State constitutions have failed to proscribe them ... the omission of a caution which would have been right, does not justify the doing what is wrong."

Letter from Thomas Jefferson to Isaac McPherson at Monticello (August 13, 1813), University of Virginia Library, Jefferson Digital Archive, electronic text center, http://128.143.22.16/jefferson/texts/ (last visited April 18, 2007).

by "only the clearest proof." *Hudson v. United States*, 522 U.S. 93, 100 (1997).

This Court deemed Alaska's statutory registration requirements non-punitive, and thus not in violation of the ex post facto prohibition. *Smith v. Doe*, 538 U.S. 84 (2002). The Alaskan statute was challenged under the Ex Post Facto Clause of Article I, § 10, cl. 1, of the Constitution and the Due Process Clause of the Fourteenth Amendment. The Court applied a five-factor analysis to determine whether the Alaskan statute's asserted intention to provide a civil regulatory scheme could be negated by its practical effects. The Court examined 1) whether the Act's requirements had been historically regarded as punishment; 2) whether the registry requirements subjected applicants to an affirmative disability or restraint; 3) whether the Act promoted traditional aims of punishment; 4) whether the Act had a rational connection to a legitimate and nonpunitive purpose; and 5) whether the regulatory scheme was excessive with respect to the Act's purpose. *Smith v. Doe*, 538 U.S. at 1144.

Like the Texas statute, the Alaska statute is codified in the State's criminal procedure code; in this context, the Smith Court found, "[a]lthough some of these provisions relate to criminal administration, they are not in themselves punitive." *Id.* at 1148. Although this does not take into the very real effects of the requirements on offenders – one could hardly logically argue, for instance, that a sentence of probation or the terms and conditions of parole have no punitive aspects[23] – the *Smith* Court noted that:

> Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation

[23] Registered offenders experience social stigmatization; loss of relationships, employment, and housing; and both verbal and physical assaults. Tewksbury, Richard, *Collateral Consequences of Sex Offender Registration*, Journal of Contemporary Criminal Justice, Vol. 21, No. 1, 67-81 (2005).

> or release in case of infraction. [. . . .] A sex offender who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the Ex Post Facto Clause.

*Id.* at 1151.

The Court drew a distinction on the basis of the fact that the charge associated with failure to register is a separate and distinguishable issue from the original charge, and thus not additional punishment for purposes of an ex post facto analysis. The conditions imposed by the Texas statute also entail a series of mandatory reporting requirements, and also allow the supervising officer to seek to revoke the registrant's freedom through imposition of a felony charge (TEX. CRIM. PROC. Art. 62.102); however, the requirements are all imposed for life, unlike the Alaska statute's reporting requirements.

Justice Steven's dissenting opinion in Smith noted that the majority's reasoning, in finding that sex offender registry requirements did not constitute punishment, did not take into account the fact that persons required to register under sex offender laws are often subject to assaults, loss of jobs and housing, and threats. Justice Stevens explained that registration requirements are "comparable to the duties imposed on other convicted criminals during periods of supervised release or parole." *Id.* at 1157. The weight of this effect is clearly punitive; however, the instant case is ultimately distinguishable from Smith in that the reporting requirements under the

Texas statute are imposed for life (with the narrow exception for juveniles, young offenders, and offenders whose crimes were committed prior to 1970) (TEX. CRIM. PROC. Art. 62.101). Under the Alaska statute at issue in *Smith v. Doe*, Petitioner herein would have been subject to a 15-year reporting requirement, as opposed to his current lifetime obligation under the Texas statute.

## CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted. Alternatively, it is requested that this Court grant the writ and remand this matter to the District Court in order to sufficiently develop the factual record herein.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 06-20280
USDC No. 4:05-CV-4310

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STEPHEN STARK,

Petitioner-Appellant,

versus

STATE OF TEXAS,

Respondent-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas

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(Filed Jan. 23, 2007)

ORDER:

Stephen Stark has filed an application for a certificate of appealability (COA) to appeal the district court's order dismissing his 28 U.S.C. § 2254 habeas corpus petition as barred by the applicable one-year limitations statute, 28 U.S.C. § 2244(d). In 1995, Stark pleaded nolo contendere to indecency with a child and was sentenced to deferred-adjudicated community supervision. In 2000, Stark was discharged from his community-supervision term. By February 2001 at the latest, he was informed that he would be subject to a new Texas provision that required him annually to verify his registration as a sex offender. In 2005, he filed this § 2254 challenging this requirement as

violating his rights under the Ex Post Facto, Due Process, and Equal Protection Clauses.

A COA will be granted only if Stark makes "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell,* 537 U.S. 322, 336 (2003). When the district court's denial of federal habeas relief is based upon procedural grounds, such as the limitations provision, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

Stark argues that the district court misapplied the one-year limitations provision because the period allegedly did not begin to run until his state postconviction application was denied by the Texas Court of Criminal Appeals. Because Stark has not shown that jurists of reason would find it debatable whether the district court was correct in its procedural ruling, his COA application is DENIED.

/s/ Carl E. Stewart
CARL E STEWART
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| STEPHEN LOUIS STARK, Petitioner, | § | |
| v. | § | CIVIL ACTION NO. H-05-4310 |
| STATE OF TEXAS, Respondent. | § | |

**MEMORANDUM AND ORDER**

Stephen Louis Stark has filed a petition for a writ of habeas corpus to challenge the collateral consequences of his state court adjudication for indecency with a child. After reviewing the pleadings, the exhibits, and the applicable law, the Court concludes that this case must be **dismissed** for reasons set forth below.

## I. BACKGROUND

Stark reports that, on March 23, 1995, he entered a plea of *nolo contendere* to felony charges of indecency with a child in cause number 22,876-85. As a result, the 85th District Court of Brazos County, Texas, imposed a five-year sentence of deferred adjudication community supervision (*i.e.*, probation). In imposing that sentence, the trial court attached numerous conditions to Stark's supervised release, including restrictions that prohibited him from visiting places or attending functions where children are likely to be present, from associating with any child below the age of 17 without the presence of another adult, and from seeking or gaining employment or volunteer work with a firm or business that provides services to children.

The conditions also required Stark to attend psychological counseling. Stark did not file a direct appeal. On May 30, 2000, Stark successfully completed his term of probation and discharged his sentence.

Stark does not challenge the validity of his underlying plea or the sentence imposed by the state court. Instead, Stark challenges subsequent conditions that have been imposed upon him as the result of a change in the law, which made persons who have received a sentence of deferred adjudication subject to compliance with the Texas Sex Offender Registration Program. In particular, Stark received notice on February 3, 2000, from the College Station Police Department Sex Offender Compliance Unit that, as of September 1, 1999, a change in Texas law required him to comply with a variety of conditions under the Texas Sex Offender Registration Program found in Chapter 62 of the Texas Code of Criminal Procedure. Stark complains that the conditions imposed upon him under this program represent "significant" restraints on his liberty that were not applicable at the time he entered his plea, including but not limited to the obligation of "in-person registry, DNA testing, and notification of local authorities whenever registrant plans to remain in a location for more than seven (7) days." Stark notes that failure to comply with the Texas Sex Offender Registration Program is a felony offense.

On April 22, 2005, Stark filed a state application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure to challenge the requirements imposed on him under the Texas Sex Offender Registration Program. In that application, Stark complained that the conditions of the program, as applied to him, violated his right to substantive due process and equal protection.

He argued further that subjecting him to these conditions was an ex post facto violation. On June 13, 2005, the state habeas corpus court rejected Stark's claims on the merits and transmitted the habeas application to the Texas Court of Criminal Appeals with a recommendation that relief be denied. *See Ex parte Stark*, No. 22,876-85-A. On July 30, 2005, the Texas Court of Criminal Appeals dismissed the application as premature, apparently reasoning that Stark's claims were not ripe because he has not been charged with violating any of the imposed conditions. *See Ex parte Stark*, No. 62,465-01.

Stark, who is represented by counsel in this matter, filed a petition for a federal writ of habeas corpus on December 21, 2005. As with his state application, he argues that application of the Texas Sex Offender Registration Program set out in Chapter 62 of the Texas Code of Criminal Procedure violates his right to substantive due process and equal protection, as well as the prohibition against ex post facto laws. Stark adds a claim not presented at the state court level that the conditions have been imposed without procedural due process. Notwithstanding the petitioner's claims, the Court concludes that the petition must be dismissed because it is barred by the governing one-year statute of limitations on federal habeas corpus review. Alternatively, his claims do not merit federal habeas corpus relief for reasons discussed below.

## II. ONE-YEAR STATUTE OF LIMITATIONS

According to the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"), Pub. L. No. 104-432, 110 Stat. 1214 (1996), all federal habeas corpus petitions

are subject to a one-year limitations period found in 28 U.S.C. § 2244(d). The one-year statute of limitations applies to all federal habeas corpus petitions filed after the AEDPA's effective date of April 24, 1996. *See Lindh v. Murphy*, 521 U.S. 320, 336 (1997); *Flanagan v. Johnson*, 154 F.3d 196, 198 (5th Cir. 1998). Because the pending habeas corpus petition was filed well after April 24, 1996, the one-year limitations period clearly applies. *See Hughes v. Dretke*, 412 F.3d 582, 588 (5th Cir. 2005).

In this case, Stark maintains that his petition is timely because it has been filed within one year of the date that the state court's review became final, citing 28 U.S.C. § 2244(d)(1)(A). Stark is mistaken. Stark does not challenge a judgment in this case. He challenges conditions imposed on him subsequent to the judgment under amendments to the Texas Sex Offender Registration Program that went into effect on September 1, 1999. Stark indicates in his petition that he received notice of the change in law and his obligation to comply with the sex offender conditions on February 3, 2000. (Docket Entry No. 1, *Petition*, Exhibit E, Notice from the College Station Police Department Sex Offender Compliance Unit). Under these circumstances, the one-year statute of limitations for federal habeas corpus review began to run on "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence." 28 U.S.C. § 2244(d)(1)(D). Thus, the notice that Stark received from the College Station Police Department on February 3, 2000, triggered the one-year statute of limitations, which expired on February 3, 2001. Stark's pending petition, filed on December 12, 2005, is late by more than four years and is therefore time-barred unless an exception applies.

### A. Statutory Tolling

Under 28 U.S.C. § 2244(d)(2), the time during which a "properly filed" application for state habeas corpus or other collateral review is pending shall not be counted toward the limitations period. *See Artuz v. Bennett*, 531 U.S. 4 (2000). Stark filed a state habeas corpus application to challenge the sex offender conditions on April 22, 2005, which the Texas Court of Criminal Appeals dismissed on July 30, 2005. Because this state habeas proceeding was filed after the limitations period had already expired, it has no tolling effect for purposes of § 2244(d)(2). *See Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000) (noting that the statute of limitations is not tolled by a state habeas corpus application filed after the expiration of the limitations period).

Stark has not alleged that he was subject to state action that impeded him from filing his petition in a timely manner. *See* 28 U.S.C. § 2244(d)(1)(B). Further, there is no showing of a newly recognized constitutional right upon which the petition is based; nor is there a factual predicate for the claims that could not have been discovered previously if the petitioner had acted with due diligence. *See* 28 U.S.C. § 2244(d)(1)(C), (D). Thus, there is no other statutory basis to save the petitioner's late-filed claims.

### B. Equitable Tolling

The statute of limitations for federal habeas corpus review may be equitably tolled at the district court's discretion where "exceptional circumstances" are present. *Coleman v. Johnson*, 184 F.3d 398, 402 (5th Cir. 1999), *cert. denied*, 529 U.S. 1057 (2000); *Davis v. Johnson*, 158

F.3d 806, 810 (5th Cir. 1998), *cert. denied*, 526 U.S. 1074 (1999). Equitable tolling is an extraordinary remedy that is only sparingly applied. *See Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990). The Supreme Court has noted that a habeas corpus petitioner seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. *See Pace v. DiGuglielmo*, ___ U.S. ___, 125 S. Ct. 1807, 1814 (2005). "A garden variety claim of excusable neglect does not support equitable tolling." *Coleman*, 184 F.3d at 402. In that respect, the doctrine of equitable tolling "applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights." *Melancon v. Kaylo*, 259 F.3d 401, 407 (5th Cir. 2001) (quoting *Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir. 1996)).

The pleadings and the exhibits in this case do not show that exceptional circumstances are present in this case. Stark pled *nolo contendere*, which is the equivalent of a guilty plea under Texas law, on March 23, 1995. The record shows that Stark received notice on February 3, 2000, that he would be subject to the Texas Sex Offender Registration Program and the conditions that he now seeks to challenge.[1] Stark waited over five years, until

[1] There is also a Texas Sex Offender Registration Program "Notification Statement" in the record on which Stark was required to place his initials beside all of the conditions applicable to him. This Notification Statement was initialed and signed by Stark on February 13, 2001, reflecting that he was fully aware of the extent of the conditions that he faced years before he attempted to seek state or federal habeas corpus review.

April 22, 2005, to submit a state habeas corpus application to challenge these conditions. Moreover, after the Texas Court of Criminal Appeals dismissed his state application on June 30, 2005, Stark waited nearly six additional months to submit his federal habeas corpus petition on December 21, 2005. These are not hallmarks of diligence.

The Court is mindful of the effect a dismissal will have on the petitioner's ability to have his claims heard by a federal court. *See Felder v. Johnson*, 204 F.3d 168, 173 (5th Cir. 2000), *cert. denied*, 531 U.S. 1035 (2000). However, the Fifth Circuit has emphasized that the "strict one-year limitations period" imposed by Congress for the filing of all habeas corpus petitions is "subject only to the narrowest of exceptions." *Fierro v. Cockrell*, 294 F.3d 674, 684 (5th Cir. 2002). Given the petitioner's apparent lack of diligence in this case, the Court concludes that his circumstances are not among those "rare and exceptional" conditions which warrant deviation from the express rules that Congress has provided. *See Felder*, 204 F.3d at 173. Accordingly, equitable tolling will not save his late-filed claims. The Court therefore concludes that his pending federal habeas corpus petition is barred by the applicable one-year limitations period. Alternatively, the Court concludes that Stark is not entitled to federal habeas corpus relief for other reasons considered briefly below.

## III. THE CLAIMS ARE WITHOUT MERIT

As noted above, Stark contends that he is entitled to federal habeas corpus relief from conditions imposed under the Texas Sex Offender Registration Program, arguing that these conditions violate his right to substantive and procedural due process, equal protection, and the

prohibition against ex post facto laws. Because the Texas Court of Criminal Appeals did not address his claims on the merits, but dismissed for procedural reasons, the Court assumes that the standard of review found in 28 U.S.C. § 2254(d) does not apply. For reasons set forth below, Stark fails to state a claim for which federal habeas corpus relief can be granted.

### A. Ex Post Facto Claim

Stark argues that the Texas Sex Offender Registration Program does not apply to him because his adjudication for indecency with a child occurred in 1995, before the sex offender registration statute was made effective to him. The Texas sex offender registration statute was originally enacted in 1991. *See* Acts 1991, 72nd Leg., R.S., ch. 572, eff. Sept. 1, 1991 (codified at TEX. REV. CIV. STAT. ANN. art. 6252-13c.l). The Texas Sex Offender Registration Program, as it is now known, is currently codified at Chapter 62 of the Texas Code of Criminal Procedure. *See* Acts 2005, 79th Leg., ch. 1008, § 1.01, eff. Sept. 1, 2005 (amending and re-codifying the Sex Offender Registration Program within Chapter 62). Prior to 1997, the sex offender registration requirement applied only to those persons convicted of a sex offense after 1991. *See Rodriguez v. State*, 93 S.W.3d 60, 66 (Tex. Crim. App. 2002). In 1997, however, the Texas legislature expanded the class of persons required to register to apply to those individuals who had a "reportable conviction or adjudication" since September 1, 1970, and who remained under some form of state supervision. *See* Act of June 1, 1997, 75th Leg., R.S., ch. 668 §§ 1, 11, 1997 Tex. Gen. Laws 2260-61, 2264 (currently codified at TEX. CODE CRIM. PROC. art. 62.002 (Vernon Supp. 2005)). Stark evidently objects to amendments that became

effective as of September 1, 1999, which extended the registration requirements to individuals like him, for whom a sentence of deferred adjudication had been entered and who remained under supervision or control of a community supervision office. See Acts 1999, 76th Leg., ch. 1193, § 10 & ch. 1401, § 10. A conviction for indecency with a child constitutes a "reportable conviction or adjudication" that trigger's application of the Texas Sex Offender Registration Program. *See* TEX. CODE CRIM. PROC. art. 62.001(5)(A) (Vernon Supp. 2005). According to the pleadings, Stark was under conditions of community supervision stemming from his 1995 sentence of deferred adjudication when the 1999 amendments went into effect. As a result, Stark fits within the category of individuals for whom the amended statute is intended to apply retroactively.

Article I, Section 10 of the United States Constitution provides that "[n]o state shall . . . pass any . . . ex post facto [l]aw." The Supreme Court has construed this to mean that states are prohibited from enacting any law "which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." *Weaver v. Graham*, 450 U.S. 24, 28 (1981). Thus, the following two elements must be present for an ex post facto violation to occur: "(1) a law must be retrospective, that is, it must apply to events occurring before its enactment, and (2) the new law must create a sufficient risk of increasing the punishment attached to the defendant's crimes." *McCall v. Dretke*, 390 F.3d 358, 363 (5th Cir. 2004) (citations and quotation omitted). Where a statute applies retroactively, the existence of an ex post facto violation depends on whether the statute constitutes additional criminal punishment for

the crimes previously committed. *See Kansas v. Hendricks*, 521 U.S. 346, 371 (1997).

Because the 1999 amendments state that they are intended to apply retrospectively, the question becomes whether the statute constitutes additional criminal punishment. To determine whether a law imposes punishment for ex post facto purposes, courts apply the so-called "intents-effects" test. *Moore v. Avoyelles Correctional Ctr.*, 253 F.3d 870, 872 (5th Cir.), *cert. denied sub nom. Moore v. Kaylo*, 534 U.S. 1008 (2001). This test requires two inquiries: (1) whether the legislature intended the sanction to be punitive; and (2) whether the sanction is so punitive in effect that the statute cannot be legitimately viewed as regulatory or civil in nature. *Id.* (citing *United States v. Ursery*, 518 U.S. 267, 288 (1996)). If the legislature's stated intent was not punitive, "only the clearest proof" of a statute's punitive effect will suffice to transform an enactment into a criminal penalty. *Smith v. Doe*, 538 U.S. 84, 92 (2003) (quoting *Hudson v. United States*, 522 U.S. 93, 100 (1997) (citations omitted)).

The Texas Court of Criminal Appeals has decided that the state sex offender registration statute poses no ex post facto violation because there is no evidence of punitive intent in the legislative history. *See Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). In that decision, the Court of Criminal Appeals noted that the Texas sex offender registration statute serves the important "nonpunitive purpose of promoting public safety by alerting the public to the presence of sex offenders." *Id.* at 74. After weighing a number of factors, the Court of Criminal Appeals characterized the Texas sex offender registration statute as "civil and remedial in nature" and concluded that its requirements were "not so punitive as to transform the statute

into a criminal sanction." *Id.* at 79. The Fifth Circuit has also held that retroactive application of the Texas Sex Offender Registration Program does not constitute an ex post facto violation because the statute "was not intended to be punitive and serves important nonpunitive goals." *Rieck v. Cockrell*, 321 F.3d 487, 488 (5th Cir. 2003) (per curium) (upholding the requirement that a parolee participate in a sex offender counseling program), *cert. denied*, 538 U.S. 1038 (2003); *see also Creekmore v. Attorney General of Texas*, 341 F. Supp.2d 648, 662-63 (E.D. Tex. 2004) (holding that the Texas sex offender statute is nonpunitive and not an ex post facto violation).

Stark does not show that the conditions imposed under the Texas Sex Offender Registration Program violate the Ex Post Facto Clause. Accordingly, he is not entitled to federal habeas corpus relief on this issue.

### B. Due Process

Stark argues further that the Texas Sex Offender Registration Program violates his right to substantive and procedural due process. In recognition of the "invasive" nature that sex offender registration requirements impose, the Fifth Circuit has held that it violates procedural and substantive notions of due process to impose these conditions upon an individual who has not, in fact, been convicted of a sex offense. *See Coleman v. Dretke*, 395 F.3d 216 (5th Cir. 2004), *cert. denied*, ___ U.S. ___, 126 S. Ct. 427 (2005). Stark's circumstances are distinguishable from the ones present in *Coleman*. Importantly, unlike the petitioner in *Coleman*, Stark does not dispute that he has a "reportable conviction or adjudication" subject to the Texas Sex Offender Registration Program. *See* TEX. CODE CRIM.

PROC. art. 62.001(5)(A) (Vernon Supp. 2005) (identifying indecency with a child as a reportable offense). Thus, unlike the case in *Coleman*, application of the Texas Sex Offender Registration Program to Stark does not impose conditions that are "qualitatively different" from the punishment characteristically suffered by a person convicted of the crime.

Accordingly, Stark fails to demonstrate that imposition of the Texas Sex Offender Registration Program violates substantive or procedural due process.

### C. Equal Protection

Stark also argues that he has been required to comply with sex offender conditions in violation of his right to equal protection. This claim fails as well. The Equal Protection Clause simply requires that "all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *Mayabb v. Johnson*, 168 F.3d 863, 870 (5th Cir.), *cert. denied*, 528 U.S. 969 (1999). A petitioner may also make out an equal protection claim by showing that he has been intentionally treated differently from others similarly situated, without any rational basis, due to illegitimate animus or ill will. *See Shipp v. McMahon*, 234 F.3d 907, 916 (5th Cir. 2000) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073, 1074-75 (2000) (per curiam) (discussing equal protection claims brought by a "class of one")). Here, Stark complains that juvenile sex offenders are afforded more lenient treatment under the Texas Sex Offender Registration Program. This allegation does not establish that officials have intentionally treated Stark differently from other similarly situated individuals or that the conditions

imposed were otherwise motivated by illegal animus or ill will.

Likewise, sex offenders are not a suspect class. Therefore, any classification need only be rationally related to a legitimate government goal to survive constitutional challenge. *See Chapman v. United States*, 500 U.S. 453, 465 (1991). "[L]egislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Cleburne*, 473 U.S. at 440. As the legislative history reflects, the Texas Sex Offender Registration Program is based on legitimate interests of law enforcement and public safety with respect to sex offenses. *See Rodriguez*, 93 S.W.3d at 68-69 (citing *In re M.A.H.*, 20 S.W.3d 860, 863 (Tex. App. – Fort Worth 2000, no pet.)); *see also Aguirre v. State*, 127 S.W.3d 883 (Tex. App. – Austin 2004, pet. ref'd). Under these circumstances, the Court is not persuaded that the Texas Sex Offender Registration Program is irrational or that Stark has a valid equal protection claim.

In conclusion, the federal courts are authorized to dismiss federal habeas petitions without ordering a response where it plainly appears that the petitioner is not entitled to relief. *See* 28 U.S.C. § 2243; Rule 4, Rules Governing Section 2254 Cases in the United States District Courts. Absent a showing that Stark is in custody in violation of the constitution, his habeas corpus petition lacks an arguable basis in law and this case must be dismissed. *See McDonald v. Johnson*, 139 F.3d 1056, 1060 (5th Cir. 1998); *Newby v. Johnson*, 81 F.3d 567, 568-69 (5th Cir. 1996).

## IV. CERTIFICATE OF APPEALABILITY

To the extent that the habeas corpus petition filed in this case is governed by the AEDPA, codified as amended at 28 U.S.C. § 2253, a certificate of appealability is required before an appeal may proceed. *See Hallmark v. Johnson*, 118 F.3d 1073, 1076 (5th Cir.) (noting that actions filed under either 28 U.S.C. § 2254 or § 2255 require a certificate of appealability), *cert. denied sub nom. Monroe v. Johnson*, 522 U.S. 1003 (1997). "This is a jurisdictional prerequisite because the COA statute mandates that '[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citing 28 U.S.C. § 2253(c)(1)).

A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which requires a petitioner to demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Tennard v. Dretke*, 542 U.S. 274, 124 S. Ct. 2562, 2569 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Under the controlling standard, this requires a petitioner to show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El*, 537 U.S. at 336. Where denial of relief is based on procedural grounds, the petitioner must show not only that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," but also that they "would find it debatable

whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

A district court may deny a certificate of appealability, *sua sponte*, without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). The Court concludes that jurists of reason would not debate whether any procedural ruling in this case was correct or whether the petitioner has stated a valid claim for the denial of a constitutional right. Accordingly, a certificate of appealability will not issue in this case.

## V. CONCLUSION

For these reasons, the Court **ORDERS** as follows:

1. This federal habeas corpus proceeding is **DISMISSED** with prejudice.

2. A certificate of appealability is **DENIED.**

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas on February 27, 2006.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| STEPHEN LOUIS STARK, Petitioner, | § | |
| v. | § | CIVIL ACTION NO. H-05-4310 |
| STATE OF TEXAS, Respondent. | § | |

**FINAL JUDGMENT**

For the reasons set out in the court's *Memorandum and Order* of even date, this case is **DISMISSED** with prejudice.

The Clerk will provide a copy of this order to the parties.

SIGNED at Houston, Texas on February 27, 2006.

/s/ Kenneth M. Hoyt
KENNETH M. HOYT
UNITED STATES
DISTRICT JUDGE

*Tex. Code Crim. Proc. art. 62.001* (2006)

Art. 62.001. Definitions

In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Local law enforcement authority" means the chief of police of a municipality or the sheriff of a county in this state.

(3) "Penal institution" means a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice, a confinement facility operated by or under contract with the Texas Youth Commission, or a juvenile secure pre-adjudication or post-adjudication facility operated by or under a local juvenile probation department, or a county jail.

(4) "Released" means discharged, paroled, placed in a nonsecure community program for juvenile offenders, or placed on juvenile probation, community supervision, or mandatory supervision.

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or

(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), or (E);

(H) a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense

containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G), but not if the violation results in a deferred adjudication; or

(I) the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication.

(5) "Reportable conviction or adjudication" means a conviction or adjudication, regardless of the pendency of an appeal, that is:

(A) a conviction for a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a conviction for a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a conviction for a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) a conviction for a violation of Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C);

(E) a conviction for a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if the judgment in the case contains an affirmative finding under Article 42.015;

(F) the second conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;

(G) a conviction for an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), (D), or (E);

(H) an adjudication of delinquent conduct:

(i) based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), (G), or (N) or, if the order in the hearing contains an affirmative finding that the victim or intended victim was younger than 17 years of age, one of the offenses listed in Paragraph (E); or

(ii) for which two violations of the offense listed in Paragraph (F) are shown;

(I) a deferred adjudication for an offense listed in:

(i) Paragraph (A), (B), (C), (D), (G), or (N); or

(ii) Paragraph (E) if the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(J) a conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), (G), or (N);

(K) an adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), (G), or (N);

(L) the second conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure;

(M) the second adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure; or

(N) a conviction for a violation of Section 33.021 (Online solicitation of a minor), Penal Code.

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (Sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code;

(C) an offense under Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5); or

(E) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D)

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**Art. 62.002. Applicability of Chapter**

(a) This chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970.

(b) Except as provided by Subsection (c), the duties imposed on a person required to register under this chapter on the basis of a reportable conviction or adjudication, and the corresponding duties and powers of other entities in relation to the person required to register on the basis of that conviction or adjudication, are not affected by:

(1) an appeal of the conviction or adjudication; or

(2) a pardon of the conviction or adjudication.

(c) If a conviction or adjudication that is the basis of a duty to register under this chapter is set aside on appeal by a court or if the person required to register under this chapter on the basis of a conviction or adjudication receives a pardon on the basis of subsequent proof of innocence, the duties imposed on the person by this chapter

and the corresponding duties and powers of other entities in relation to the person are terminated.

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**Art. 62.003. Determination Regarding Substantially Similar Elements of Offense**

(a) For the purposes of this chapter, the department is responsible for determining whether an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice contains elements that are substantially similar to the elements of an offense under the laws of this state.

(b) The department annually shall provide or make available to each prosecuting attorney's office in this state:

(1) the criteria used in making a determination under Subsection (a); and

(2) any existing record or compilation of offenses under the laws of another state, federal law, the laws of a foreign country, and the Uniform Code of Military Justice that the department has already determined to contain elements that are substantially similar to the elements of offenses under the laws of this state.

(c) An appeal of a determination made under this article shall be brought in a district court in Travis County.

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**Art. 62.004. Determination Regarding Primary Registration Authority**

(a) For each person subject to registration under this chapter, the department shall determine which local law enforcement authority serves as the person's primary

registration authority based on the municipality or county in which the person resides or, as provided by Article 62.152, the municipality or county in which the person works or attends school.

(b) The department shall notify each person subject to registration under this chapter of the person's primary registration authority in a timely manner.

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**Art. 62.005. Central Database; Public Information**

(a) The department shall maintain a computerized central database containing the information required for registration under this chapter. The department may include in the computerized central database the numeric risk level assigned to a person under this chapter.

(b) The information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information:

(1) regarding the person's social security number, driver's license number, or telephone number;

(2) that is required by the department under Article 62.051(c)(7); or

(3) that would identify the victim of the offense for which the person is subject to registration.

(c) Notwithstanding Chapter 730, Transportation Code, the department shall maintain in the database, and shall post on any department website related to the database, any photograph of the person that is available through the process for obtaining or renewing a personal identification

certificate or driver's license under Section 521.103 or 521.272, Transportation Code. The department shall update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.

(d) A local law enforcement authority shall release public information described under Subsection (b) to any person who requests the information from the authority. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(e) The department shall provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. The department shall provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

(f) On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(g) For the purposes of Subsections (e) and (f):

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

(h) Not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration or under Article 62.058, the department shall send notice of any person required to register under this chapter who is or will be employed, carrying on a vocation, or a student at a public or private institution of higher education in this state to:

(1) for an institution in this state:

(A) the authority for campus security for that institution; or

(B) if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(i) the municipality in which the institution is located; or

(ii) the county in which the institution is located, if the institution is not located in a municipality; or

(2) for an institution in another state, any existing authority for campus security at that institution.

(i) On the written request of an institution of higher education described by Subsection (h) that identifies an individual and states that the individual has applied to work or study at the institution, the department shall release any information described by Subsection (a) to the institution.

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**Art. 62.006. Information Provided to Peace Officer on Request**

The department shall establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a driver's license number, personal identification certificate number, or license plate number is automatically provided information as to whether the person to whom the driver's license or personal identification certificate is issued is required to register under this chapter or whether the license plate number is entered in the computerized central database under Article 62.005 as assigned to a vehicle owned or driven by a person required to register under this chapter.

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**Art. 62.007. Risk Assessment Review Committee; Sex Offender Screening Tool**

(a) The Texas Department of Criminal Justice shall establish a risk assessment review committee composed of at least seven members, each of whom serves on the review committee in addition to the member's other employment-related duties. The review committee, to the extent feasible, must include at least:

(1) one member having experience in law enforcement;

(2) one member having experience working with juvenile sex offenders;

(3) one member having experience as a sex offender treatment provider;

(4) one member having experience working with victims of sex offenses;

(5) the executive director of the Council on Sex Offender Treatment; and

(6) one sex offender treatment provider registered under Chapter 110, Occupations Code, and selected by the executive director of the Council on Sex Offender Treatment to serve on the review committee.

(b) The risk assessment review committee functions in an oversight capacity. The committee shall:

(1) develop or select, from among existing tools or from any tool recommended by the Council on Sex Offender Treatment, a sex offender screening tool to be used in determining the level of risk of a person subject to registration under this chapter;

(2) ensure that staff is trained on the use of the screening tool;

(3) monitor the use of the screening tool in the state; and

(4) analyze other screening tools as they become available and revise or replace the existing screening tool if warranted.

(c) The sex offender screening tool must use an objective point system under which a person is assigned a designated number of points for each of various factors. In developing or selecting the sex offender screening tool, the risk assessment review committee shall use or shall select a screening tool that may be adapted to use the following general guidelines:

(1) level one (low): a designated range of points on the sex offender screening tool indicating that the person

poses a low danger to the community and will not likely engage in criminal sexual conduct;

(2) level two (moderate): a designated range of points on the sex offender screening tool indicating that the person poses a moderate danger to the community and might continue to engage in criminal sexual conduct; and

(3) level three (high): a designated range of points on the sex offender screening tool indicating that the person poses a serious danger to the community and will continue to engage in criminal sexual conduct.

(d) The risk assessment review committee, the Texas Department of Criminal Justice, the Texas Youth Commission, or a court may override a risk level only if the entity:

(1) believes that the risk level assessed is not an accurate prediction of the risk the offender poses to the community; and

(2) documents the reason for the override in the offender's case file.

(e) Notwithstanding Chapter 58, Family Code, records and files, including records that have been sealed under Section 58.003 of that code, relating to a person for whom a court, the Texas Department of Criminal Justice, or the Texas Youth Commission is required under this article to determine a level of risk shall be released to the court, department, or commission, as appropriate, for the purpose of determining the person's risk level.

(f) Chapter 551, Government Code, does not apply to a meeting of the risk assessment review committee.

(g) The numeric risk level assigned to a person using the sex offender screening tool described by this article is not confidential and is subject to disclosure under Chapter 552, Government Code.

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**Art. 62.008. General Immunity**

The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, the Department of Public Safety, the Board of Pardons and Paroles, or a local law enforcement authority;

(2) an employee or officer of a community supervision and corrections department or a juvenile probation department;

(3) a member of the judiciary; and

(4) a member of the risk assessment review committee established under Article 62.007.

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**Art. 62.009. Immunity for Release of Public Information**

(a) The department, a penal institution, a local law enforcement authority, or an authority for campus security may release to the public information regarding a person required to register under this chapter only if the information is public information under this chapter.

(b) An individual, agency, entity, or authority is not liable under Chapter 101, Civil Practice and Remedies Code, or any other law for damages arising from conduct authorized by Subsection (a).

(c) For purposes of determining liability, the release or withholding of information by an appointed or elected officer of an agency, entity, or authority is a discretionary act.

(d) A private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education may release to the public information regarding a person required to register under this chapter only if the information is public information under this chapter and is released to the administrator under Article 62.005, 62.053, 62.054, 62.055, or 62.153. A private primary or secondary school, public or private institution of higher education, or administrator of a private primary or secondary school or public or private institution of higher education is not liable under any law for damages arising from conduct authorized by this subsection.

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**Art. 62.010. Rulemaking Authority**

The Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the department may adopt any rule necessary to implement this chapter.

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**Art. 62.051. Registration: General**

(a) A person who has a reportable conviction or adjudication or who is required to register as a condition of parole, release to mandatory supervision, or community supervision shall register or, if the person is a person for whom registration is completed under this chapter, verify registration as provided by Subsection (f), with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days. The person shall satisfy the requirements of this subsection not later than the later of:

(1) the seventh day after the person's arrival in the municipality or county; or

(2) the first date the local law enforcement authority of the municipality or county by policy allows the person to register or verify registration, as applicable.

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority, authority for campus security, county jail, and court with a form for registering persons required by this chapter to register.

(c) The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and

(7) any other information required by the department.

(d) The registration form must contain a statement and description of any registration duties the person has or may have under this chapter.

(e) Not later than the third day after a person's registering, the local law enforcement authority with whom the person registered shall send a copy of the registration form to the department and, if the person resides on the campus of a public or private institution of higher education, to any authority for campus security for that institution.

(f) A person for whom registration is completed under this chapter shall report to the applicable local law enforcement authority to verify the information in the

registration form received by the authority under this chapter. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is complete and accurate, the person shall verify registration by signing the form. If the information is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.

(g) A person who is required to register or verify registration under this chapter shall ensure that the person's registration form is complete and accurate with respect to each item of information required by the form in accordance with Subsection (c).

(h) If a person subject to registration under this chapter does not move to an intended residence by the end of the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, the person shall:

(1) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person by not later than the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, as applicable, and provide the officer with the address of the person's temporary residence; and

(2) continue to report to the person's supervising officer not less than weekly during any period of time in which the person has not moved to an intended residence and provide the officer with the address of the person's temporary residence.

(i) If the other state has a registration requirement for sex offenders, a person who has a reportable conviction or adjudication, who resides in this state, and who is employed, carries on a vocation, or is a student in another state shall, not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information. If the person is employed, carries on a vocation, or is a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, the person shall also register with that authority not later than the 10th day after the date on which the person begins to work or attend school.

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**Art. 62.052. Registration: Extrajurisdictional Registrants**

(a) An extrajurisdictional registrant is required to comply with the annual verification requirements of Article 62.058 in the same manner as[1] a person who is required to verify registration on the basis of a reportable conviction or adjudication.

(b) The duty to register for an extrajurisdictional registrant expires on the date the person's duty to register would expire under the laws of the other state or foreign country had the person remained in that state or foreign

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[1] Acts 1999, 76th Leg., ch. 444, § 2 here reads "manner as is".

country, under federal law, or under the Uniform Code of Military Justice, as applicable.

(c) The department may negotiate and enter into a reciprocal registration agreement with any other state to prevent residents of this state and residents of the other state from frustrating the public purpose of the registration of sex offenders by moving from one state to the other.

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**Art. 62.053. Prerelease Notification**

(a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Youth Commission shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:

(1) inform the person that:

(A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the later of the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;

(B) not later than the seventh day after the date on which the person is released or the date on which the

person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(C) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

(D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;

(E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; and

(F) the person must notify appropriate entities of any change in status as described by Article 62.057;

(2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;

(3) obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and

(4) complete the registration form for the person.

(b) On the seventh day before the date on which a person who will be subject to registration under this chapter is due to be released from a penal institution, or on receipt of notice by a penal institution that a person who will be subject to registration under this chapter is due to be released in less than seven days, an official of the penal institution shall send the person's completed registration form and numeric risk level to the department and to:

(1) the applicable local law enforcement authority in the municipality or county in which the person expects to reside, if the person expects to reside in this state; or

(2) the law enforcement agency that is identified by the department as the agency designated by another state to receive registration information, if the person expects to reside in that other state and that other state has a registration requirement for sex offenders.

(c) If a person who is subject to registration under this chapter receives an order deferring adjudication, placing the person on community supervision or juvenile probation, or imposing only a fine, the court pronouncing the order or sentence shall make a determination of the

person's numeric risk level using the sex offender screening tool developed or selected under Article 62.007, assign to the person a numeric risk level of one, two, or three, and ensure that the prerelease notification and registration requirements specified in this article are conducted on the day of entering the order or sentencing. If a community supervision and corrections department representative is available in court at the time a court pronounces a sentence of deferred adjudication or community supervision, the representative shall immediately obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article. In any other case in which the court pronounces a sentence under this subsection, the court shall designate another appropriate individual to obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article.

(d) If a person who has a reportable conviction described by Article 62.001(5)(H) or (I) is placed under the supervision of the pardons and paroles division of the Texas Department of Criminal Justice or a community supervision and corrections department under Article 42.11, the division or community supervision and corrections department shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the division or community supervision and corrections department. If a person who has a reportable adjudication of delinquent conduct described by Article 62.001(5)(H) or (I) is, as permitted by Section 60.002, Family Code, placed under the supervision of the Texas Youth Commission, a public or private vendor operating under contract with the

Texas Youth Commission, a local juvenile probation department, or a juvenile secure pre-adjudication or post-adjudication facility, the commission, vendor, probation department, or facility shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the commission, vendor, probation department, or facility.

(e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d), the local law enforcement authority shall verify the age of the victim, the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The local law enforcement authority shall immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate, in accordance with Article 62.054. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

(f) The local law enforcement authority shall include in the notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district any information the authority determines is necessary to protect the public, except:

(1) the person's social security number, driver's license number, or telephone number; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

(g) Before a person who will be subject to registration under this chapter is due to be released from a penal institution in this state, an official of the penal institution shall inform the person that:

(1) if the person intends to reside in another state and to work or attend school in this state, the person must, not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to work or attend school;

(2) if the person intends to reside in this state and to work or attend school in another state and if the other state has a registration requirement for sex offenders, the person must:

(A) not later than the 10th day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information; and

(B) if the person intends to be employed, carry on a vocation, or be a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, register with

that authority not later than the 10th day after the date on which the person begins to work or attend school; and

(3) regardless of the state in which the person intends to reside, if the person intends to be employed, carry on a vocation, or be a student at a public or private institution of higher education in this state, the person must:

(A) not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable authority by policy allows the person to register, register with:

(i) the authority for campus security for that institution; or

(ii) except as provided by Article 62.153(e), if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(a) the municipality in which the institution is located; or

(b) the county in which the institution is located, if the institution is not located in a municipality; and

(B) not later than the seventh day after the date the person stops working or attending school, notify the appropriate authority for campus security or local law enforcement authority of the termination of the person's status as a worker or student.

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**Art. 62.054. Circumstances Requiring Notice to Superintendent or School Administrator**

(a) A local law enforcement authority shall provide notice to the superintendent and each administrator under Article 62.053(e) or 62.055(f) only if:

(1) the victim was at the time of the offense a child younger than 17 years of age or a student enrolled in a public or private secondary school;

(2) the person subject to registration is a student enrolled in a public or private secondary school; or

(3) the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 43.25 or 43.26, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under either of those sections.

(b) A local law enforcement authority may not provide notice to the superintendent or any administrator under Article 62.053(e) or 62.055(f) if the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 25.02, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under that section.

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**Art. 62.055. Change of Address**

(a) If a person required to register under this chapter intends to change address, regardless of whether the person intends to move to another state, the person shall, not later than the seventh day before the intended change, report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer,

community supervision and corrections department officer, or parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person required to register changes address, the person shall, not later than the later of the seventh day after changing the address or the first date the applicable local law enforcement authority by policy allows the person to report, report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

(b) Not later than the third day after receipt of notice under Subsection (a), the person's juvenile probation officer, community supervision and corrections department officer, or parole officer shall forward the information provided under Subsection (a) to the local law enforcement authority designated as the person's primary registration authority by the department and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(c) If the person moves to another state that has a registration requirement for sex offenders, the person shall, not later than the 10th day after the date on which the person arrives in the other state, register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information.

(d) Not later than the third day after receipt of information under Subsection (a) or (b), whichever is earlier, the local law enforcement authority shall forward this information to

the department and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(e) if a person who reports to a local law enforcement authority under Subsection (a) does not move on or before the anticipated move date or does not move to the new address provided to the authority, the person shall:

(1) not later than the seventh day after the anticipated move date, and not less than weekly after that seventh day, report to the local law enforcement authority designated as the person's primary registration authority by the department and provide an explanation to the authority regarding any changes in the anticipated move date and intended residence; and

(2) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person not less than weekly during any period in which the person has not moved to an intended residence.

(f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a). Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) or under this subsection, the authority shall verify the age of the victim, the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The local law enforcement authority shall immediately provide notice to

the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate, in accordance with Article 62.054. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

(g) The local law enforcement authority shall include in the notice to the superintendent of the public school district and the administrator of any private primary or secondary school located in the public school district any information the authority determines is necessary to protect the public, except:

(1) the person's social security number, driver's license number, or telephone number; and

(2) any information that would identify the victim of the offense for which the person is subject to registration.

(h) If the person moves to another state, the department shall, immediately on receiving information under Subsection (d):

(1) inform the agency that is designated by the other state to receive registration information, if that state has a registration requirement for sex offenders; and

(2) send to the Federal Bureau of Investigation a copy of the person's registration form, including the record of conviction and a complete set of fingerprints.

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**Art 62.056, Additional Public Notice for Certain Offenders**

(a) On receipt of notice under this chapter that a person subject to registration is due to be released from a penal institution, has been placed on community supervision or juvenile probation, or intends to move to a new residence in this state, the department shall verify the person's numeric risk level assigned under this chapter. If the person is assigned a numeric risk level of three, the department shall, not later than the seventh day after the date on which the person is released or the 10th day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside. In providing written notice under this subsection, the department shall use employees of the department whose duties in providing the notice are in addition to the employees' regular duties.

(b) The department shall provide the notice in English and Spanish and shall include in the notice any information that is public information under this chapter. The department may not include any information that is not public information under this chapter.

(c) The department shall establish procedures for a person with respect to whom notice is provided under Subsection (a), other than a person subject to registration on the basis of an adjudication of delinquent conduct, to pay to the department all costs incurred by the department in providing the notice. The person shall pay those

costs in accordance with the procedures established under this subsection.

(d) On receipt of notice under this chapter that a person subject to registration under this chapter is required to register or verify registration with a local law enforcement authority and has been assigned a numeric risk level of three, the local law enforcement authority may provide notice to the public in any manner determined appropriate by the local law enforcement authority, including publishing notice in a newspaper or other periodical or circular in circulation in the area where the person intends to reside, holding a neighborhood meeting, posting notices in the area where the person intends to reside, distributing printed notices to area residents, or establishing a specialized local website. The local law enforcement authority may include in the notice only information that is public information under this chapter.

(e) An owner, builder, seller, or lessor of a single-family residential real property or any improvement to residential real property or that person's broker, salesperson, or other agent or representative in a residential real estate transaction does not have a duty to make a disclosure to a prospective buyer or lessee about registrants under this chapter. To the extent of any conflict between this subsection and another law imposing a duty to disclose information about registered sex offenders, this subsection controls.

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**Art. 62.057. Status Report by Supervising Officer or Local Law Enforcement Authority**

(a) If the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including a change in the person's name, physical health, job or educational status, including higher educational status, incarceration, or terms of release, the supervising officer shall promptly notify the appropriate local law enforcement authority or authorities of that change. If the person required to register intends to change address, the supervising officer shall notify the local law enforcement authorities designated by Article 62.055(b). Not later than the seventh day after the date the supervising officer receives the relevant information, the supervising officer shall notify the local law enforcement authority of any change in the person's job or educational status in which the person:

(1) becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education; or

(2) terminates the person's status in that capacity.

(b) Not later than the seventh day after the date of the change, a person subject to registration under this chapter shall report to the local law enforcement authority designated as the person's primary registration authority by the department any change in the person's name, physical health, or job or educational status, including higher educational status.

(c) For purposes of Subsection (b):

(1) a person's job status changes if the person leaves employment for any reason, remains employed by an employer but changes the location at which the person works, or begins employment with a new employer;

(2) a person's health status changes if the person is hospitalized as a result of an illness;

(3) a change in a person's educational status includes the person's transfer from one educational facility to another; and

(4) regarding a change of name, notice of the proposed name provided to a local law enforcement authority as described by Sections 45.004 and 45.103, Family Code, is sufficient, except that the person shall promptly notify the authority of any denial of the person's petition for a change of name.

(d) Not later than the seventh day after the date the local law enforcement authority receives the relevant information, the local law enforcement authority shall notify the department of any change in the person's job or educational status in which the person:

(1) becomes employed, begins to carry on a vocation, or becomes a student at a particular public or private institution of higher education; or

(2) terminates the person's status in that capacity.

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**Art. 62.058. Law Enforcement Verification of Registration Information**

(a) A person subject to registration under this chapter who has for a sexually violent offense been convicted two or more times, received an order of deferred adjudication two or more times, or been convicted and received an order of deferred adjudication shall report to the local law enforcement authority designated as the person's primary registration authority by the department not less than once in each 90-day period following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. A person subject to registration under this chapter who is not subject to the 90-day reporting requirement described by this subsection shall report to the local law enforcement authority designated as the person's primary registration authority by the department once each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the person's date of birth to verify the information in the registration form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 90-day period following a date if the person registers at any time on or after the 83rd day following that date but before the 98th day after that date.

(b) A local law enforcement authority designated as a person's primary registration authority by the department may direct the person to report to the authority to verify the information in the registration form maintained by the authority for that person. The authority may direct the person to report under this subsection once in each 90-day period following the date the person first registered under

this chapter, if the person is required to report not less than once in each 90-day period under Subsection (a) or once in each year not earlier than the 30th day before and not later than the 30th day after the anniversary of the person's date of birth, if the person is required to report once each year under Subsection (a). A local law enforcement authority may not direct a person to report to the authority under this subsection if the person is required to report under Subsection (a) and is in compliance with the reporting requirements of that subsection.

(c) A local law enforcement authority with whom a person reports under this article shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is complete and accurate, the person shall verify registration by signing the form. If the information is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.

(d) A local law enforcement authority designated as a person's primary registration authority by the department may at any time mail a nonforwardable verification form to the last reported address of the person. Not later than the 21st day after receipt of a verification form under this subsection, the person shall:

(1) indicate on the form whether the person still resides at the last reported address and, if not, provide on the form the person's new address;

(2) complete any other information required by the form;

(3) sign the form; and

(4) return the form to the authority.

(e) For purposes of this article, a person receives multiple convictions or orders of deferred adjudication regardless of whether:

(1) the judgments or orders are entered on different dates; or

(2) the offenses for which the person was convicted or placed on deferred adjudication arose out of different criminal transactions.

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**Art 62.059. Registration of Persons Regularly Visiting Location**

(a) A person subject to this chapter who on at least three occasions during any month spends more than 48 consecutive hours in a municipality or county in this state, other than the municipality or county in which the person is registered under this chapter, before the last day of that month shall report that fact to:

(1) the local law enforcement authority of the municipality in which the person is a visitor; or

(2) if the person is a visitor in a location that is not a municipality, the local law enforcement authority of the county in which the person is a visitor.

(b) A person described by Subsection (a) shall provide the local law enforcement authority with:

(1) all information the person is required to provide under Article 62.051(c);

(2) the address of any location in the municipality or county, as appropriate, at which the person was lodged during the month; and

(3) a statement as to whether the person intends to return to the municipality or county during the succeeding month.

(c) This article does not impose on a local law enforcement authority requirements of public notification or notification to schools relating to a person about whom the authority is not otherwise required by this chapter to make notifications.

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**Art. 62.060. Requirements Relating to Driver's License or Personal Identification Certificate**

(a) A person subject to registration under this chapter shall apply to the department in person for the issuance of, as applicable, an original or renewal driver's license under Section 521.272, Transportation Code, an original or renewal personal identification certificate under Section 521.103. Transportation Code, or an original or renewal commercial driver's license or commercial driver learner's permit under Section 522.033, Transportation Code, not later than the 30th day after the date:

(1) the person is released from a penal institution or is released by a court on community supervision or juvenile probation; or

(2) the department sends written notice to the person of the requirements of this article.

(b) The person shall annually renew in person each driver's license or personal identification certificate issued by the department to the person, including each renewal, duplicate, or corrected license or certificate, until the person's duty to register under this chapter expires.

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**Art. 62.101. Expiration of Duty to Register**

(a) Except as provided by Subsection (b) and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter;

(4) an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015 or, for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(5) an offense under Section 43.23, Penal Code, that is punishable under Subsection (h) of that section.

(b) Except as provided by Subchapter I, the duty to register for a person otherwise subject to Subsection (a) ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later, if the person's duty to register is based on a conviction or an order of deferred adjudication in a cause that was transferred to a district court or criminal district court under Section 54.02, Family Code.

(c) Except as provided by Subchapter I, the duty to register for a person with a reportable conviction or adjudication for an offense other than an offense described by Subsection (a) ends:

(1) if the person's duty to register is based on an adjudication of delinquent conduct, on the 10th anniversary of the date on which the disposition is made or the person completes the terms of the disposition, whichever date is later; or

(2) if the person's duty to register is based on a conviction or on an order of deferred adjudication, on the 10th anniversary of the date on which the court dismisses the criminal proceedings against the person and discharges the person, the person is released from a penal institution, or the person discharges community supervision, whichever date is later.

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**Art. 62.102. Failure to Comply With Registration Requirements**

(a) A person commits an offense if the person is required to register and fails to comply with any requirement of this chapter.

(b) An offense under this article is:

(1) a state jail felony if the actor is a person whose duty to register expires under Article 62.101(b) or (c);

(2) a felony of the third degree if the actor is a person whose duty to register expires under Article 62.101(a) and who is required to verify registration once each year under Article 62.058; and

(3) a felony of the second degree if the actor is a person whose duty to register expires under Article 62.101(a) and who is required to verify registration once each 90-day period under Article 62.058.

(c) If it is shown at the trial of a person for an offense or an attempt to commit an offense under this article that the person has previously been convicted of an offense or an attempt to commit an offense under this article, the punishment for the offense or the attempt to commit the offense is increased to the punishment for the next highest degree of felony.

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**Art. 62.151. Definitions**

For purposes of this subchapter, a person:

(1) is employed or carries on a vocation if the person works or volunteers on a full-time or part-time basis for a

consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year;

(2) works regardless of whether the person works for compensation or for governmental or educational benefit; and

(3) is a student if the person enrolls on a full-time or part-time basis in any educational facility, including:

(A) a public or private primary or secondary school, including a high school or alternative learning center; or

(B) a public or private institution of higher education.

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**Art. 62.152. Registration of Certain Workers or Students**

(a) A person is subject to this subchapter and, except as otherwise provided by this article, to the other subchapters of this chapter if the person:

(1) has a reportable conviction or adjudication;

(2) resides in another state; and

(3) is employed, carries on a vocation, or is a student in this state.

(b) A person described by Subsection (a) is subject to the registration and verification requirements of Articles 62.051 and 62.058 and to the change of address requirements of Article 62.055, except that the registration and verification and the reporting of a change of address are based on the municipality or county in which the person works or attends school. The person is subject to the school notification requirements of Articles 62.053-62.055, except

that notice provided to the superintendent and any administrator is based on the public school district in which the person works or attends school.

(c) A person described by Subsection (a) is not subject to Article 62.101.

(d) The duty to register for a person described by Subsection (a) ends when the person no longer works or studies in this state, provides notice of that fact to the local law enforcement authority in the municipality or county in which the person works or attends school, and receives notice of verification of that fact from the authority. The authority must verify that the person no longer works or studies in this state and must provide to the person notice of that verification within a reasonable time.

(e) Notwithstanding Subsection (a), this article does not apply to a person who has a reportable conviction or adjudication, who resides in another state, and who is employed, carries on a vocation, or is a student in this state if the person establishes another residence in this state to work or attend school in this state. However, that person remains subject to the other articles of this chapter based on that person's residence in this state.

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**Art. 62.153. Registration of Workers or Students at Institutions of Higher Education**

(a) Not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable authority by policy allows the person to register, a person required to register under Article 62.152 or any other provision of this chapter who is employed, carries on a vocation, or is a student at a public

or private institution of higher education in this state shall report that fact to:

(1) the authority for campus security for that institution; or

(2) if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(A) the municipality in which the institution is located; or

(B) the county in which the institution is located, if the institution is not located in a municipality.

(b) A person described by Subsection (a) shall provide the authority for campus security or the local law enforcement authority with all information the person is required to provide under Article 62.051(c).

(c) A person described by Subsection (a) shall notify the authority for campus security or the local law enforcement authority not later than the seventh day after the date of termination of the person's status as a worker or student at the institution.

(d) The authority for campus security or the local law enforcement authority shall promptly forward to the administrative office of the institution any information received from the person under this article and any information received from the department under Article 62.005.

(e) Subsection (a)(2) does not require a person to register with a local law enforcement authority if the person is otherwise required by this chapter to register with that authority.

(f) This article does not impose the requirements of public notification or notification to public or private primary or secondary schools on:

(1) an authority for campus security; or

(2) a local law enforcement authority, if those requirements relate to a person about whom the authority is not otherwise required by this chapter to make notifications.

(g) Notwithstanding Article 62.059, the requirements of this article supercede those of Article 62.059 for a person required to register under both this article and Article 62.059.

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**Art. 62.201. Additional Public Notice for Individuals Subject to Civil Commitment**

(a) On receipt of notice under this chapter that a person subject to registration who is civilly committed as a sexually violent predator is due to be released from a penal institution or intends to move to a new residence in this state, the department shall, not later than the seventh day after the date on which the person is released or the seventh day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside.

(b) The department shall provide the notice in English and Spanish and shall include in the notice any information that is public information under this chapter. The

department may not include any information that is not public information under this chapter.

(c) The department shall establish procedures for a person with respect to whom notice is provided under this article to pay to the department all costs incurred by the department in providing the notice. The person shall pay those costs in accordance with the procedures established under this subsection.

(d) The department's duty to provide notice under this article in regard to a particular person ends on the date on which a court releases the person from all requirements of the civil commitment process.

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**Art. 62.202. Verification of Individuals Subject to Commitment**

(a) Notwithstanding Article 62.058, if an individual subject to registration under this chapter is civilly committed as a sexually violent predator, the person shall report to the local law enforcement authority designated as the person's primary registration authority by the department not less than once in each 30-day period following the date the person first registered under this chapter to verify the information in the registration form maintained by the authority for that person. For purposes of this subsection, a person complies with a requirement that the person register within a 30-day period following a date if the person registers at any time on or after the 27th day following that date but before the 33rd day after that date.

(b) On the date a court releases a person described by Subsection (a) from all requirements of the civil commitment process:

(1) the person's duty to verify registration as a sex offender is no longer imposed by this article; and

(2) the person is required to verify registration as provided by Article 62.058.

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**Art. 62.203. Failure to Comply: Individuals Subject to Commitment**

(a) A person commits an offense if the person, after commitment as a sexually violent predator but before the person is released from all requirements of the civil commitment process, fails to comply with any requirement of this chapter.

(b) An offense under this article is a felony of the second degree.

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**Art. 62.251. Removing Registration Information When Duty to Register Expires**

(a) When a person is no longer required to register as a sex offender under this chapter, the department shall remove all information about the person from the sex offender registry.

(b) The duty to remove information under Subsection (a) arises if:

(1) the department has received notice from a local law enforcement authority under Subsection (c) or (d) that the person is no longer required to register or will no longer be required to renew registration and the department verifies the correctness of that information;

(2) the court having jurisdiction over the case for which registration is required requests removal and the department determines that the duty to register has expired; or

(3) the person or the person's representative requests removal and the department determines that the duty to register has expired.

(c) When a person required to register under this chapter appears before a local law enforcement authority to renew or modify registration information, the authority shall determine whether the duty to register has expired. If the authority determines that the duty to register has expired, the authority shall remove all information about the person from the sex offender registry and notify the department that the person's duty to register has expired.

(d) When a person required to register under this chapter appears before a local law enforcement authority to renew registration information, the authority shall determine whether the renewal is the final annual renewal of registration required by law. If the authority determines that the person's duty to register will expire before the next annual renewal is scheduled, the authority shall automatically remove all information about the person from the sex offender registry on expiration of the duty to register and notify the department that the information about the person has been removed from the registry.

(e) When the department has removed information under Subsection (a), the department shall notify all local law enforcement authorities that have provided registration information to the department about the person of the removal. A local law enforcement authority that receives notice from the department under this subsection shall

remove all registration information about the person from its registry.

(f) When the department has removed information under Subsection (a), the department shall notify all public and private agencies or organizations to which it has provided registration information about the person of the removal. On receiving notice, the public or private agency or organization shall remove all registration information about the person from any registry the agency or organization maintains that is accessible to the public with or without charge.

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**Art. 62.301. Exemption From Registration for Certain Young Adult Sex Offenders**

(a) If eligible under Subsection (b) or (c), a person required to register under this chapter may petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time after the person's sentencing or after the person is placed on deferred adjudication community supervision.

(b) A person is eligible to petition the court as described by Subsection (a) if:

(1) the person is required to register only as a result of a single reportable conviction or adjudication, other than an adjudication of delinquent conduct; and

(2) the court has entered in the appropriate judgment or has filed with the appropriate papers a statement of an affirmative finding described by Article 42.017 or Section 5(g), Article 42.12.

(c) A defendant who before September 1, 2001, is convicted of or placed on deferred adjudication community supervision for an offense under Section 21.11, 22.011, 32.021, or 43.25, Penal Code, is eligible to petition the court as described by Subsection (a). The court may consider the petition only if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding under Article 42.017 or Section 5(g), Article 42.12, as appropriate, had the conviction or placement on deferred adjudication community supervision occurred after September 1, 2001.

(d) After a hearing on the petition described by Subsection (a), the court may issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence:

(1) as presented by a registered sex offender treatment provider, that the exemption does not threaten public safety; and

(2) that the person's conduct did not occur without the consent of the victim or intended victim as described by Section 22.011(b), Penal Code.

(e) An order exempting the person from registration under this chapter does not expire, but the court shall withdraw the order if after the order is issued the person receives a reportable conviction or adjudication under this chapter.

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**Art. 62.351. Motion and Hearing Generally**

(a) During or after disposition of a case under Section 54.04, Family Code, for adjudication of an offense for which registration is required under this chapter, the juvenile court on motion of the respondent shall conduct a hearing to determine whether the interests of the public require registration under this chapter. The motion may be filed and the hearing held regardless of whether the respondent is under 18 years of age. Notice of the motion and hearing shall be provided to the prosecuting attorney.

(b) The hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Article 62.352(a) have been met. The court at the hearing may make its determination based on:

(1) the receipt of exhibits;

(2) the testimony of witnesses;

(3) representations of counsel for the parties; or

(4) the contents of a social history report prepared by the juvenile probation department that may include the results of testing and examination of the respondent by a psychologist, psychiatrist, or counselor.

(c) All written matter considered by the court shall be disclosed to all parties as provided by Section 54.04(b), Family Code.

(d) If a respondent, as part of a plea agreement, promises not to file a motion seeking an order exempting the respondent from registration under this chapter, the court

may not recognize a motion filed by a respondent under this article.

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**Art. 62.352. Order Generally**

(a) The court shall enter an order exempting a respondent from registration under this chapter if the court determines:

(1) that the protection of the public would not be increased by registration of the respondent under this chapter; or

(2) that any potential increase in protection of the public resulting from registration of the respondent is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration under this chapter.

(b) After a hearing under Article 63.351 or under a plea agreement described by Article 62.355(b), the juvenile court may enter an order:

(1) deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Youth Commission; or

(2) requiring the respondent to register as a sex offender but providing that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education.

(c) If the court enters an order described by Subsection (b)(1), the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required. Following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the state, regardless of whether the respondent is 18 years of age or older, and the court determines the interests of the public require registration. Not later than the 10th day after the date of the respondent's successful completion of treatment, the treatment provider shall notify the juvenile court and prosecuting attorney of the completion.

(d) Information that is the subject of an order described by Subsection (b)(2) may not be posted on the Internet or released to the public.

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**Art. 62.353. Motion, Hearing, and Order Concerning Person Already Registered**

(a) A person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, may file a motion in the adjudicating juvenile court for a hearing seeking:

(1) exemption from registration under this chapter as provided by Article 62.351; or

(2) an order under Article 62.352(b)(2) that the registration become nonpublic.

(b) The person may file a motion under Subsection (a) in the original juvenile case regardless of whether the person, at the time of filing the motion, is 18 years of age or older. Notice of the motion shall be provided to the prosecuting attorney. A hearing on the motion shall be provided as in other cases under this subchapter.

(c) Only one subsequent motion may be filed under Subsection (a) if a previous motion under this article has been filed concerning the case.

(d) To the extent feasible, the motion under Subsection (a) shall identify those public and private agencies and organizations, including public or private institutions of higher education, that possess sex offender registration information about the case.

(e) The juvenile court, after a hearing, may:

(1) deny a motion filed under Subsection (a);

(2) grant a motion described by Subsection (a)(1); or

(3) grant a motion described by Subsection (a)(2).

(f) If the court grants a motion filed under Subsection (a), the clerk of the court shall by certified mail, return receipt requested, send a copy of the order to the department, to each local law enforcement authority that the person has proved to the juvenile court has registration information about the person, and to each public or private agency or organization that the person has proved to the juvenile court has information about the person that is currently available to the public with or without payment of a fee. The clerk of the court shall by certified mail, return receipt requested, send a copy of the order to any other agency or organization designated by the person.

The person shall identify the agency or organization and its address and pay a fee of $20 to the court for each agency or organization the person designates.

(g) In addition to disseminating the order under Subsection (f), at the request of the person, the clerk of the court shall be certified mail, return receipt requested, send a copy of the order to each public or private agency or organization that at any time following the initial dissemination of the order under Subsection (f) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subsection (f).

(h) An order under Subsection (f) must require the recipient to conform its records to the court's order either by deleting the sex offender registration information or changing its status to nonpublic, as applicable. A public or private institution of higher education may not be required to delete the sex offender registration information under this subsection.

(i) A private agency or organization that possesses sex offender registration information the agency or organization obtained from a state, county, or local governmental entity is required to conform the agency's or organization's records to the court's order on or before the 30th day after the date of the entry of the order. Unless the agency or organization is a public or private institution of higher education, failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

**Art. 62.354. Motion, Hearing, and Order Concerning Person Required to Register Because of Out-of-state Adjudication**

(a) A person required to register as a sex offender in this state because of an out-of-state adjudication of delinquent conduct may file in the juvenile court of the person's county of residence a petition under Article 62.351 for an order exempting the person from registration under this chapter.

(b) If the person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent conduct, the person may file in the juvenile court of the person's county of residence a petition under Article 62.353 for an order removing the person from sex offender registries in this state.

(c) On receipt of a petition under this article, the juvenile court shall conduct a hearing and make rulings as in other cases under this subchapter.

(d) An order entered under this article requiring removal of registration information applies only to registration information derived from registration in this state.

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**Art. 62.355. Waiver of Hearing**

(a) The prosecuting attorney may waive the state's right to a hearing under this subchapter and agree that registration under this chapter is not required. A waiver under this subsection must state whether the waiver is entered under a plea agreement.

(b) If the waiver is entered under a plea agreement, the court, without a hearing, shall:

(1) enter an order exempting the respondent from registration under this chapter; or

(2) under Section 54.03(j), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to:

(A) withdraw the respondent's plea of guilty, nolo contendere, or true; or

(B) affirm the respondent's plea and participate in the hearing.

(c) If the waiver is entered other than under a plea agreement, the court, without a hearing, shall enter an order exempting the respondent from registration under this chapter.

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**Art. 62.356. Effect of Certain Orders**

(a) A person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.001(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this subchapter exempting the person from the registration requirements of this chapter.

(b) If the juvenile court enters an order exempting a person from registration under this chapter, the respondent may not be required to register in this or any other state for the offense for which registration was exempted.

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**Art. 62.357. Appeal of Certain Orders**

(a) Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Article 62.352(a) exempting a respondent from registration under this chapter, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration under this chapter. The appeal is limited to review of the order exempting the respondent from registration under this chapter and may not include any other issues in the case.

(b) A respondent may under Section 56.01, Family Code, appeal a juvenile court's order under Article 62.352(a) requiring registration in the same manner as the appeal of any other legal issue in the case. The standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in requiring registration.

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**Art. 62.402. Determination of Minimum Required Registration Period**

(a) The council by rule shall determine the minimum required registration period under 42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.

(b) After determining the minimum required registration period for each reportable conviction or adjudication under Subsection (a), the council shall compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter for a period that exceeds the minimum required registration period under federal law.

(c) To the extent possible, the council shall periodically verify with the Bureau of Justice Assistance or another appropriate federal agency the accuracy of the list of reportable convictions or adjudications described by Subsection (b).

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**Art. 62.403. Individual Risk Assessment**

(a) The council by rule shall establish, develop, or adopt an individual risk assessment tool or a group of individual risk assessment tools that:

(1) evaluates the criminal history of a person required to register under this chapter; and

(2) seeks to predict:

(A) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and

(B) the continuing danger, if any, that the person poses to the community.

(b) On the written request of a person with a single reportable adjudication or conviction that appears on the list published under Article 62.402(b), the council shall:

(1) evaluate the person using the individual risk assessment tool or group of individual risk assessment tools established, developed, or adopted under Subsection (a); and

(2) provide to the person a written report detailing the outcome of an evaluation conducted under Subdivision (1).

(c) An individual risk assessment provided to a person under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

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**Art 62.404. Motion for Early Termination**

(a) A person required to register under this chapter who has requested and received an individual risk assessment under Article 62.403 may file with the trial court that sentenced the person for the reportable conviction or adjudication a motion for early termination of the person's obligation to register under this chapter.

(b) A motion filed under this article must be accompanied by:

(1) a written explanation of how the reportable conviction or adjudication giving rise to the movant's registration under this chapter qualifies as a reportable conviction or adjudication that appears on the list published under Article 62.402(b); and

(2) a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.403(b)(1).

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**Art. 62.405. Hearing on Petition**

(a) After reviewing a motion filed with the court under Article 62.404, the court may:

(1) deny without a hearing the movant's request for early termination; or

(2) hold a hearing on the motion to determine whether to grant or deny the motion.

(b) The court may not grant a motion filed under Article 62.404 if:

(1) the motion is not accompanied by the documents required under Article 62.404(b); or

(2) the court determines that the reportable conviction or adjudication for which the movant is required to register under this chapter is not a reportable conviction or adjudication for which the movant is required to register for a period that exceeds the minimum required registration period under federal law.

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**Art. 62.407. Effect of Order Granting Early Termination**

(a) If, after notice to the person and to the prosecuting attorney and a hearing, the court grants a motion filed under Article 62.404 for the early termination of a person's obligation to register under this chapter, notwithstanding Article 62.101, the person's obligation to register under this chapter ends on the later of:

(1) the date the court enters the order of early termination; or

(2) the date the person has paid each cost described by Section 62.406.

(b) If the court grants a motion filed under Article 62.404 for the early termination of a person's obligation to register under this chapter, all conditions of the person's parole, release to mandatory supervision, or community supervision shall be modified in accordance with the court's order.

V.T.C.A., Family Code § 54.02

**§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court**

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal proceedings if:

(1) the child is alleged to have violated a penal law of the grade of felony;

(2) the child was:

(A) 14 years of age or older at the time he is alleged to have committed the offense, if the offense is a capital felony, an aggravated controlled substance felony, or a felony of the first degree, and no adjudication hearing has been conducted concerning that offense; or

(B) 15 years of age or older at the time the child is alleged to have committed the offense, if the offense is a felony of the second or third degree or a state jail felony, and no adjudication hearing has been conducted concerning that offense; and

(3) after a full investigation and a hearing, the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings.

(b) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering discretionary transfer to criminal court.

(c) The juvenile court shall conduct a hearing without a jury to consider transfer of the child for criminal proceedings.

(d) Prior to the hearing, the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

(e) At the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses. At least one day prior to the transfer hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the transfer decision. The court may order counsel not to reveal items to the child or his parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.

(f) In making the determination required by Subsection (a) of this section, the court shall consider, among other matters:

(1) whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) the sophistication and maturity of the child;

(3) the record and previous history of the child; and

(4) the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by

use of procedures, services, and facilities currently available to the juvenile court.

(g) If the petition alleges multiple offenses that constitute more than one criminal transaction, the juvenile court shall either retain or transfer all offenses relating to a single transaction. A child is not subject to criminal prosecution at any time for any offense arising out of a criminal transaction for which the juvenile court retains jurisdiction.

(h) If the juvenile court waives jurisdiction, it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor. On transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure. The transfer of custody is an arrest.

(i) A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court.

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

(1) the person is 18 years of age or older;

(2) the person was:

(A) 10 years of age or older and under 17 years of age at the time the person is alleged to have

committed a capital felony or an offense under Section 19.02, Penal Code;

(B) 14 years of age or older and under 17 years of age at the time the person is alleged to have committed an aggravated controlled substance felony or a felony of the first degree other than an offense under Section 19.02, Penal Code; or

(C) 15 years of age or older and under 17 years of age at the time the person is alleged to have committed a felony of the second or third degree or a state jail felony;

(3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted;

(4) the juvenile court finds from a preponderance of the evidence that:

(A) for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or

(B) after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(i) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person;

(ii) the person could not be found; or

(iii) a previous transfer order was reversed by an appellate court or set aside by a district court; and

(5) the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

(m) Notwithstanding any other provision of this section, the juvenile court shall waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal court for criminal proceedings if:

(1) the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless:

(A) the child was not indicted in the matter transferred by the grand jury;

(B) the child was found not guilty in the matter transferred;

(C) the matter transferred was dismissed with prejudice; or

(D) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final; and

(2) the child is alleged to have violated a penal law of the grade of felony.

(n) A mandatory transfer under Subsection (m) may be made without conducting the study required in discretionary transfer proceedings by Subsection (d). The requirements of Subsection (b) that the summons state that the

purpose of the hearing is to consider discretionary transfer to criminal court does not apply to a transfer proceeding under Subsection (m). In a proceeding under Subsection (m), it is sufficient that the summons provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.

(o) If a respondent is taken into custody for possible discretionary transfer proceedings under Subsection (j), the juvenile court shall hold a detention hearing in the same manner as provided by Section 54.01, except that the court shall order the respondent released unless it finds that the respondent:

(1) is likely to abscond or be removed from the jurisdiction of the court;

(2) may be dangerous to himself or herself or may threaten the safety of the public if released; or

(3) has previously been found to be a delinquent child or has previously been convicted of a penal offense punishable by a term of jail or prison and is likely to commit an offense if released.

(p) If the juvenile court does not order a respondent released under Subsection (o), the court shall, pending the conclusion of the discretionary transfer hearing, order that the respondent be detained in:

(1) a certified juvenile detention facility as provided by Subsection (q); or

(2) an appropriate county facility for the detention of adults accused of criminal offenses.

(q) The detention of a respondent in a certified juvenile detention facility must comply with the detention requirements under this title, except that, to the extent

practicable, the person shall be kept separate from children detained in the same facility.

(r) If the juvenile court orders a respondent detained in a county facility under Subsection (p), the county sheriff shall take custody of the respondent under the juvenile court's order. The juvenile court shall set or deny bond for the respondent as required by the Code of Criminal Procedure and other law applicable to the pretrial detention of adults accused of criminal offenses.

## 50 STATE SURVEYS
## SURVEYS OF CRIMINAL LAWS
## SEX OFFENDER REGISTRATION (WEST 2006)

Sex Offender Registration

Increased public concern over the release of convicted sex offenders has led to the enactment of statutes mandating the registration of offenders and community notification. Sex offender registration and notification programs are designed to protect communities by providing information about sex offenders to law enforcement and the public.

There are two well-known pieces of federal legislation addressing the issue of sex offender registration and community notification. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was passed in 1994 and requires all states to enact a program mandating that designated offenders register with state ~~or local~~ authorities (or risk losing 10% of its federal anti-crime funding). In 1996, President Clinton signed Megan's Law, as an amendment to the Jacob Wetterling Act, requiring community notification when sex offenders move into a neighborhood. Primarily as a result of the federal legislation, all jurisdictions have adopted a sex offender registration program. Many also require community notification. This survey identifies each state's registration and notification laws.

**Alabama**

AL ST § 13A-11-200 Reporting and registration requirements

AL ST § 13A-11-201 Sheriff to maintain register; disclosure of information

AL ST § 13A-11-202 Department of Public Safety to maintain register; disclosure of information

AL ST § 15-20-20 Title of article

AL ST § 15-20-20.1 Legislative findings

AL ST § 15-20-21 Definitions

AL ST § 15-20-22 Adult criminal sex offender – Requirements prior to release

AL ST § 15-20-23 Adult criminal sex offender – Transfer and establishment of legal residence

AL ST § 15-20-23.1 Adult criminal sex offender – Notice of intent to change place of employment

AL ST § 15-20-24 Adult criminal sex offender – Verification of residence

AL ST § 15-20-AL ST § 15-20-25 Adult criminal sex offender – Community notification procedures

AL ST § 15-20-25.1 Adult criminal sex offender – Registration by non-resident workers and students

AL ST § 15-20-25.2 Adult criminal sex offender – Notice of employment, enrollment, etc., at institution of higher education

AL ST § 15-20-25.3 Sexually violent predator

AL ST § 15-20-26 Adult criminal sex offender – Prohibited residence locations, etc

AL ST § 15-20-26.1 Adult criminal sex offender – Electronic monitoring

AL ST § 15-20-26.2 Adult criminal sex offender – Documentation of identity

AL ST § 15-20-27 Juvenile criminal sex offender -- Treatment; DNA sample

AL ST § 15-20-28 Juvenile criminal sex offender – Risk assessment; notification

AL ST § 15-20-29 Juvenile criminal sex offender – Requirements prior to release

AL ST § 15-20-30 Juvenile criminal sex offender – Verification of residence

AL ST § 15-20-31 Juvenile criminal sex offender – When treated as adult

AL ST § 15-20-32 Procedures upon escape of criminal sex offender

AL ST § 15-20-33 Exemptions from article

AL ST § 15-20-34 Victim assistance

AL ST § 15-20-35 Disclosure of information

AL ST § 15-20-36 Name change of offender

AL ST § 15-20-37 Construction

AL ST § 15-20-37 Rules and regulations

**Alaska**

AK ST § 12.63.010 Registration of sex offenders and related requirements.

AK ST § 12.63.020 Duration of sex offender or child kidnapper duty to register

AK ST § 12.63.030 Notification of other jurisdictions

AK ST § 12.63.100 Definitions

AK ST § 18.65.087 Central registry of sex offenders

**Arizona**

AZ ST § 13-3821. Persons required to register; procedure; identification card; definitions

AZ ST § 13-3822. Notice of moving from place of residence where living or change of name; forwarding of information; definitions

AZ ST § 13-3823. Access to records

AZ ST § 13-3824. Violation; classification; assessment

AZ ST § 13-3825. Community notification

AZ ST § 13-3826. Community notification guidelines committee; members; duties; definition

AZ ST § 13-3827. Internet sex offender web site; investigation of records; immunity

AZ ST § 13-3828. Sex offender monitoring fund

**Arkansas**

AR ST § 9-27-356 Juvenile sex offender assessment and registration

AR ST § 12-12-901 Title

AR ST § 12-12-902 Legislative findings

AR ST § 12-12-903 Definitions

AR ST § 12-12-904 Failure to register – Failure to comply with reporting requirements

AR ST § 12-12-905 Applicability

AR ST § 12-12-906 Duty to register generally – Review of requirements with offenders

AR ST § 12-12-907 Report to Arkansas Crime Information Center – Report to law enforcement agency

AR ST § 12-12-908 Registration format – Requirements

AR ST § 12-12-909 Verification form – Change of address

AR ST § 12-12-910 Fine

AR ST § 12-12-911 Sexual and Child Offenders Registration Fund

AR ST § 12-12-912 Arrests for violations

AR ST § 12-12-913 Disclosure

AR ST § 12-12-914 Notice of release

AR ST § 12-12-915 Regulations

AR ST § 12-12-916 Notice of obligation to register

AR ST § L2-12-917 Evaluation protocol – examiners

AR ST § 12-12-918 Classification as sexually violent predator

AR ST § 12-12-919 Termination of obligation to register

AR ST § 12-12-920 Immunity from civil liability

AR ST § 12-12-922 Alternative procedure for sexually violent predator evaluations

**California**

CA PENAL § 290 Registration of sex offenders

CA PENAL § 290.1 Registration of sex offenders; exception

CA PENAL § 290.4 Sex offender registration; compilation of information for specified offenses; "900" telephone number; income deposit; violations; penalties; report to legislature

CA PENAL § 290.8 Notice when local law enforcement agency does not provide daily, business hour registration of sex offenders

CA PENAL § 290.85 Persons released on probation or parole who are required to register as sex offender; proof of registration; changes or updates; role of probation officer or parole agent

**Colorado**

CO ST § 16-22-101 Short title

CO ST § 16-22-102 Definitions

CO ST § 16-22-103 Sex offender registration – required – applicability – exception

CO ST § 16-22-104 Initial registration – effective date – repeal

CO ST § 16-22-105 Notice – requirements – residence – presumption

CO ST § 16-22-106 Duties – probation department – community corrections administrator – court personnel – jail personnel – notice

CO ST § 16-22-107 Duties – department of corrections – department of human services – confirmation of registration – notice – address verification

CO ST § 16-22-108 Registration – procedure – frequency – place – change of address – fee

CO ST § 16-22-109 Registration forms – local law enforcement agencies – duties

CO ST § 16-22-110 Colorado sex offender registry – creation – maintenance – release of information

CO ST § 16-22-111 Internet posting of sex offenders – procedure

CO ST § 16-22-112 Release of information – law enforcement agencies

CO ST § 16-22-113 Petition for removal from registry

CO ST § 16-22-114 Immunity

**Connecticut**

CT ST § 54-250 Definitions

CT ST § 54-251 Registration of person who has committed a criminal offense against a victim who is a minor or a nonviolent sexual offender

CT ST § 54-252 Registration of person who has committed a sexually violent offense

CT ST § 54-253 Registration of person who has committed a sexual offense in another jurisdiction

CT ST § 54-254 Registration of person who has committed a felony for a sexual purpose

CT ST § 54-255 Restriction on dissemination of registration information for certain offenders

CT ST § 54-256 Responsibilities of courts and agencies in registration process

CT ST § 54-257 Registry. Suspension of registration. Verification of address. Retake of photographic image. Change of name

CT ST § 54-258 Availability of registration information. Immunity

CT ST § 54-258a Warning against wrongful use of registry information

CT ST § 54-260 Notification of change of name or address of sexual offenders on parole or probation

CT ST § 54-261 Community response education program

**Delaware**

DE ST TI 11 § 4120 Registration of sex offenders

DE ST TI 11 § 4121 Community notification of sex offenders on probation, parole, conditional release or release from confinement

DE ST TI 11 § 4122 Transition provisions

**District of Columbia**

DC CODE § 22-4001 Definitions

DC CODE § 22-4002 Registration period

DC CODE § 22-4003 Certification duties of the Superior Court

DC CODE § 22-4004 Dispute resolution procedures in the Superior Court

DC CODE § 22-4005 Duties of the Department of Corrections

DC CODE § 22-4006 Duties of the Department of Mental Health

DC CODE § 22-4007 Registration functions of the Court Services and Offender Supervision Agency

DC CODE § 22-4008 Verification functions of the Court Services and Offender Supervision Agency

DC CODE § 22-4009 Change of address or other information

DC CODE § 22-4010 Maintenance and release of sex offender registration information by the Court Services and Offender Supervision Agency

DC CODE § 22-4011 Community notification and education duties of the Metropolitan Police Department

DC CODE § 22-4012 Interagency coordination

DC CODE § 22-4013 Immunity

DC CODE § 22-4014 Duties of sex offenders

DC CODE § 22-4015 Penalties; mandatory release condition

DC CODE § 22-4016 No change in age of consent; registration not required for offenses between consenting adults

DC CODE § 22-4017 Freedom of Information Act exception

**Florida**

FL ST § 775.21 The Florida Sexual Predators Act

FL ST § 943.0435 Sexual offenders required to register with the department; penalty

FL ST § 943.04351 Search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment

FL ST § 943.04352 Search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation

FL ST § 943.04353 Triennial study of sexual predator and sexual offender registration and notification procedures

**Georgia**

GA ST § 42-1-12 Registration of sex offenders

GA ST § 42-1-13 Residence of registered sex offender prohibited 1,000 feet from school, child care facility, or place where minors congregate

GA ST § 42-9-44.1 Certain sex offenders to provide notice and information to officials in community where offenders will reside upon release on parole

**Hawaii**

HI ST § 846E-1 Definitions

HI ST § 846E-2 Registration requirements

HI ST § 846E-3 Access to registration information

HI ST § 846E-4 Duties upon discharge, parole, or release of sex offender

HI ST § 846E-5 Periodic verification of registration information

HI ST § 846E-6 Requirement to register a change of registration information; verification by the attorney general

HI ST § 846E-7 Notification by the attorney general of changes in registration information

HI ST § 846E-8 Good faith immunity

HI ST § 846E-9 Failure to comply with sex offender registration requirements

**Idaho**

ID ST § 18-8301 Short title

ID ST § 18-8302 Findings

ID ST § 18-8303 Definitions

ID ST § 18-8304 Application of chapter

ID ST § 18-8305 Central registry – Notice to agencies

ID ST § 18-8306 Notice of duty to register and initial registration

ID ST § 18-8307 Initial registration

ID ST § 18-8308 Verification of address of violent sexual predator

ID ST § 18-8309 Change of address or name

ID ST § 18-8310 Release from registration requirements – Expungement

ID ST § 18-8311 Penalties

ID ST § 18-8312 Sexual offender classification board – Appointment – Terms – Vacancies – Chairman – Quorum – Qualifications of members – Compensation of members

ID ST § 18-8313 Removal of board members

ID ST § 18-8314 Powers and duties of the sexual offender classification board

ID ST § 18-8315 Compliance with open meeting law – Executive sessions authorized – Report required

ID ST § 18-8316 Requirement for psychosexual evaluations upon conviction

ID ST § 18-8317 Requirement for psychosexual evaluations upon release

ID ST § 18-8318 Offender required to pay for psychosexual evaluation

ID ST § 18-8319 Notice of the board's determination

ID ST § 18-8320 Exception to notice of board's classification determination to offender

ID ST § 18-8321 Judicial review

ID ST § 18-8322 Violent sexual predators moving from other states

ID ST § 18-8323 Public access to sexual offender registry information

ID ST § 18-8324 Dissemination of registry information

ID ST § 18-8325 Exemption from civil liability

ID ST § 18-8326 Penalties for vigilantism or other misuse of information obtained under this chapter

ID ST § 18-8327 Adult criminal sex offender – Prohibited employment

ID ST § 18-8328 Action for relief by offender or juvenile offender

ID ST § 18-8401 Short title

ID ST § 18-8402 Findings

ID ST § 18-8403 Definitions

ID ST § 18-8404 Juvenile sex offender registry

ID ST § 18-8405 Notification of duty to register – Probation

ID ST § 18-8406 Notification of duty to register – Prior to release

ID ST § 18-8407 Annual registration

ID ST § 18-8408 Providing list to superintendent of public instruction

ID ST § 18-8409 Failure to register, penalties

ID ST § 18-8410 Transfer to adult registry

ID ST § 18-8411 Juveniles convicted as adults

ID ST § 18-8412 Exemption from civil liability

ID ST § 18-8413 Penalties for vigilantism or other misuse of information obtained under this chapter

ID ST § 18-8414 Juvenile sex offender – Prohibited employment

**Illinois**

IL ST CH 730 § 150/1 Short title

IL ST CH 730 § 150/2 Definitions

IL ST CH 730 § 150/3 Duty to register

IL ST CH 730 § 150/4 Discharge of sex offender, as defined in Section 2 of this Act, or sexual predator from Department of Corrections facility or other penal institution; duties of official in charge

IL ST CH 730 § 150/5 Release of sex offender, as defined in Section 2 of this Act, or sexual predator; duties of the Court

IL ST CH 730 § 150/5-5 Discharge of sex offender or sexual predator from a hospital or other treatment facility; duties of the official in charge

IL ST CH 730 § 150/5-10 Nonforwardable verification letters

IL ST CH 730 § 150/6 Duty to report; change of address, school, or employment; duty to inform

IL ST CH 730 § 150/6-5 Out-of-State employee or student; duty to report change

IL ST CH 730 § 150/7 Duration of registration

IL ST CH 730 § 150/8 Registration Requirements

IL ST CH 730 § 150/8-5 Verification requirements

IL ST CH 730 § 150/9 Public inspection of registration data

IL ST CH 730 § 150/10 Penalty

IL ST CH 730 § 150/10.9 Severability

IL ST CH 730 § 150/11 Sex offender registration fund

IL ST CH 730 § 159/12 Access to State of Illinois databases

IL ST CH 730 § 152/101 Short title

IL ST CH 730 § 152/105 Definitions

IL ST CH 730 § 152/110 Registration

IL ST CH 730 § 152/115 Sex offender database

IL ST CH 730 § 152/117 Promulgation of Rules

IL ST CH 730 § 152/120 Community notification of sex offenders

IL ST CH 730 § 152/121 Notification regarding juvenile offenders

IL ST CH 730 § 152/130 Immunity

IL ST CH 730 § 152/905 Severability

IL ST CH 730 § 152/999 Effective date

**Indiana**

IN ST 5-2-12-1 "Correctional facility" defined

IN ST 5-2-12-2 "Institute" defined

IN ST 5-2-12-3 "Local law enforcement authority" defined

IN ST 5-2-12-3.5 "Registration form" defined

IN ST 5-2-12-4 "Offender" defined

IN ST 5-2-12-4.5 "Sexually violent predator" defined

IN ST 5-2-12-5 Registration with law enforcement authorities; jurisdiction; residency; photographs of offender; publication on Indiana sheriffs' sex offender registry web site; notification of institute

IN ST 5-2-12-6 Registration information required

IN ST 5-2-12-7 Duties of facility officials; release or parole of offender

IN ST 5-2-12-7.5 Sending fingerprints to FBI

IN ST 5-2-12-8 Verification of offender's current residence, employment, or vocation

IN ST 5-2-12-8.5 Verification of offender's current residence

IN ST 5-2-12-8.6 Change of name of offender

IN ST 5-2-12-9 Failure to register

IN ST 5-2-12-13 Termination of duty to register

IN ST 5-2-12-14 Compacts with jurisdictions outside Indiana to exchange information regarding offenders

IN ST 36-2-13-5.5 Indiana sheriffs' sex offender registry; web site; required information

**Iowa**

IA ST § 692A.1 Definitions

IA ST § 692A.2 Persons required to register

IA ST § 692A.2A Residency restrictions – child care facilities and schools

IA ST § 692A.3 Registration process

IA ST § 692A.3A Additional registration requirements – institutions of higher education

IA ST § 692A.4 Verification of address and taking of photograph

IA ST § 692A.4A Electronic monitoring

IA ST § 692A.5 Duty to facilitate registration

IA ST § 692A.6 Registration fees and civil penalty for offenders

IA ST § 692A.7 Failure to comply – penalty

IA ST § 692A.8 Determination of requirement to register

IA ST § 692A.9 Registration forms

IA ST § 692A.10 Department duties – registry

IA ST § 692A.11 Sex offender registry fund

IA ST § 692.12 Duties of the sheriff

IA ST § 692A.13 Availability of records

IA ST § 692A.13A Assessment of risk

IA ST § 692A.14 Cooperation with registration

IA ST § 692A.15 Immunity for good faith conduct

IA ST § 692A.16 Applicability of chapter

**Kansas**

KS ST § 22-4901 Citation of act

KS ST § 22-4902 Definitions

KS ST § 22-4903 Penalties

KS ST § 22-4904 Registration of offender; duties of sheriff; verification of address

KS ST § 22-4905 Release of offender; duties of court and staff of facility upon release relating to offender registration

KS ST § 22-4906 Time period in which required to register; termination of registration requirement

KS ST § 22-4907 Information required in registration; KBI participation in FBI program

KS ST § 22-4908 Person required to register shall not be relieved of further registration

KS ST § 22-4909 Information subject to open records act; nondisclosure of certain information relating to victim

KS ST § 22-4910 Effective date

KS ST § 22-4911 Cause of action; not created

KS ST § 22-4912 Relief from requirement registration

**Kentucky**

KY ST § 17.495 Registrant prohibited from residing near school or day care facility; exception

KY ST § 17.497 Persons immune from suit for good faith conduct under KRS 17.500 to 17.540 and 17.550 to 17.991

KY ST § 17.500 Definitions for KRS 17.500 to 17.540

KY ST § 17.510 Registration system for adults who have committed sex crimes or crimes against minors; persons required to register; manner of registration; penalties

KY ST § 17.520 Period of registration

KY ST § 17.530 Authority to share information from registrations

KY ST § 17.540 Short title for KRS 17.500 to 17.540

KY ST § 17.550 Definitions for KRS 17.550 to 17.991

KY ST § 17.552 Approval requirement for sexual offender risk evaluations or treatment; exemptions

KY ST § 17.554 Sex Offender Risk Assessment Advisory Board; risk assessment procedure

KY ST § 17.556 Membership of board; chair; terms; committees

KY ST § 17.558 Issuance of approvals

KY ST § 17.560 Hearing; order; appeal

KY ST § 17.562 Quorum; votes for action of board

KY ST § 17.564 Authority for administrative regulations

KY ST § 17.566 Use of "approved provider" designation restricted

KY ST § 17.568 Injunctive relief

KY ST § 17.574 Forwarding of relevant information by certain facilities to approved provider for review prior to release; confidentiality

KY ST § 17.576 Privileged communications; written waiver

KY ST § 17.578 Termination of duty to register

KY ST § 17.580 Duty of Kentucky State Police to maintain and update web site containing information about adults who have committed sex crimes or crimes against minors; immunity from liability for good faith dissemination of information; Justice Cabinet to establish toll-free telephone number

**Louisiana**

LA R.S. 15:540 Findings; purpose

LA R.S. 15:541 Definitions

LA R.S. 15:542 Registration of sex offenders

LA R.S. 15:542.1 Registration of sexually violent predators and child predators

LA R.S. 15:542.2 Notification by school superintendents of allegations of the commission of a sex offense

LA R.S. 15:543 Offender notification

LA R.S. 15:544 Duty to register

LA R.S. 15:545 Duty of law enforcement

LA R.S. 15:546 Release of information

LA R.S. 15:547 Board of Parole

LA R.S. 15:548 Dissemination policy

LA R.S. 15:549 Notification

LA R.S. 15:550 Pilot program; location tracking and crime correlation based electronic monitoring supervision program for certain sex and violent offenders

**Maine**

ME ST T. 34-A § 11201 Short title

ME ST T. 34-A § 11202 Application

ME ST T. 34-A § 11203 Definitions

ME ST T. 34-A § 11221 Maintenance of sex offender registry

ME ST T. 34-A § 11222 Duty of registrant

ME ST T. 34-A § 11223 Duty of person establishing domicile to register

ME ST T. 34-A § 11224 Duty of person employed or attending college or school to register

ME ST T. 34-A § 11225-A Duration of registration

ME ST T. 34-A § 11226 Fee

ME ST T. 34-A § 11227 Violation

ME ST T. 34-A § 11228 Certification by record custodian

ME ST T. 34-A § 11252 Immunity from liability

ME ST T. 34-A § 11253 Risk assessment

ME ST T. 34-A § 11254 Mandatory notification of conditional release or discharge of registrants

ME ST T. 34-A § 11255 Public notification

ME ST T. 34-A § 11256 Risk assessment assistance

**Maryland**

MD CRIM PROC § 11-701 Definitions

MD CRIM PROC § 11-702 Elements of conviction

MD CRIM PROC § 11-702.1 Retroactive application of subtitle

MD CRIM PROC § 11-703 Determination of predator status

MD CRIM PROC § 11-704 Registration required

MD CRIM PROC § 11-705 Deadline for registration

MD CRIM PROC § 11-706 Registration statements

MD CRIM PROC § 11-707 Term of registration

MD CRIM PROC § 11-708 Duties of supervising authority

MD CRIM PROC § 11-709 Notification requirements of local law enforcement unit

MD CRIM PROC § 11-710 Notice of registrant's change of address

MD CRIM PROC § 11-711 Verification forms

MD CRIM PROC § 11-712 Notice of escape and recapture

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TN ST § 40-39-204 Data repository; reporting and exemptions; re-incarceration

TN ST § 40-39-205 Printing and distribution of forms; explanation of requirements and sanctions to offenders

TN ST § 40-39-206 Centralized record system; noncompliance; data privacy; liability; rules and regulations

TN ST § 40-39-207 Petition to terminate offender participation in registration program; definition

TN ST § 40-39-208 Violations; certification

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TN ST § 40-39-305 Fees

TN ST § 40-39-306 Sharing of criminal incident information

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TX CRIM PRO Art. 62.052 Registration: Extrajurisdictional Registrants

TX CRIM PRO Art. 62.053 Prerelease Notification

TX CRIM PRO Art. 62.054 Circumstances Requiring Notice to Superintendent or School Administrator

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TX CRIM PRO Art. 62.057 Status Report by Supervising Officer or Local Law Enforcement Authority

TX CRIM PRO Art. 62.058 Law Enforcement Verification of Registration Information

TX CRIM PRO Art. 62.059 Registration of Persons Regularly Visiting Location

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VT ST T. 13 § 5402 Sex offender registry

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VT ST T. 13 § 5405 Court determination of sexually violent predators

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VT ST T. 13 § 5413 Expungement of records

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VA ST § 9.1-900 Purpose of the Sex Offender and Crimes Against Minors Registry

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VA ST § 9.1-902 Offenses requiring registration

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VA ST § 9.1-904 Reregistration

VA ST § 9.1-905 New residents and nonresident offenders; registration required

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WA ST 9A.44.130 Registration of sex offenders and kidnapping offenders – Procedures – Definition – Penalties

WA ST 9A.44.135 Address verification

WA ST 9A.44.140 Registration of sex offenders and kidnapping offenders – End of duty to register – Expiration of subsection

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WV ST § 15-12-2 Registration

WV ST § 15-12-2a Court determination of sexually violent predator

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WV ST § 15-12-3 Change in registry information

WV ST § 15-12-3a Petition for removal of sexually violent predator designation

WV ST § 15-12-4 Duration

WV ST § 15-12-5 Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court

WV ST § 15-12-6 Duties of institution officials

WV ST § 15-12-7 Information shall be released when person moves out of state

WV ST § 15-12-8 Failure to register or provide notice of registration changes; penalty

WV ST § 15-12-9 Registration of out-of-state offenders

WV ST § 15-12-10 Address verification

**Wisconsin**

WI ST 301.45 Sex offender registration

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WI ST 301.47 Sex offender name changes prohibited

**Wyoming**

WY ST § 7-19-301 Definitions

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WY ST § 7-19-303 Offenders central registry; dissemination of information.

WY ST § 7-19-304 Termination of duty to register

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WY ST § 7-19-307 Penalties

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42 USCA § 14071 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program

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9 G.C.A. § 89.02 Classification of Offenders

9 G.C.A. § 89.03 Registration; Duty to Register

9 G.C.A. § 89.04 Registration

9 G.C.A. § 89.04.05 Penalties

9 G.C.A. § 89.04.06 Duties of the Department of Corrections and the Court; Initial Registration

9 G.C.A. § 89.04.07 Duties of the Department of Corrections and the Court, Verification of Registered Information

9 G.C.A. § 89.04.08 Duties of the Guam Police Department

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4 L.P.R.A. § 535 Definitions

4 L.P.R.A. § 535a Creation of the Registry

4 L.P.R.A. § 535b Duties before the Registry

4 L.P.R.A. § 535c Obligations of the person subject to the Registry

4 L.P.R.A. § 535d Declaration of dangerous sexual offender; obligations of the person

4 L.P.R.A. § 535e Notice to agencies of public law and order and the communities

4 L.P.R.A. § 535f Immunity

4 L.P.R.A. § 535g Penalties

4 L.P.R.A. § 535h Disclosure of this chapter

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14 V.I.C. § 1721 Definitions

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14 V.I.C. § 1721 Immunity for good-faith conduct from civil and criminal liability for providing or failing to provide relevant information

14 V.I.C. § 1729 Duties of employers

14 V.I.C. § 1730 Penalty

14 V.I.C.1731 General provisions

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EX PARTE STEPHEN LOUIS STARK

**PETITION FOR WRIT OF HABEAS CORPUS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Petitioner, STEPHEN LOUIS STARK, files this application for writ of habeas corpus flows from the denial of Petitioner's writ of habeas corpus. Petitioner brings this challenge in light of mandatory lifetime registration requirements imposed post-conviction. Petitioner would show the Court as follows:

Jurisdiction

Jurisdiction lies under 28 U.S.C. § 2244 and § 2241; 2244(d)(1) (A) provides that petitions for habeas corpus may be brought in federal court within one (1) year of the date the state court's review becomes final.

Procedural History

The writ of habeas corpus was filed in the state district court (85th Judicial District Court, Brazos County, Texas) on April 22, 2005 (attachment A herein). The State of Texas filed its response on or about May 24, 2005 (attachment B).

The State district court denied the writ by order on June 13, 2005 (attachment C).

The Texas Court of Criminal Appeals dismissed the writ on July 30, 2005 on the basis that the Petitioner's

community supervision order "had not been revoked. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 1, 3(a) - (b)" (attachment D).

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Basis for Writ

A. Statement of the Proceedings/Procedural History.

On March 23, 1995, Petitioner entered a plea of nolo contendre on one count of indecency with a child and was placed on five years' deferred adjudication. The Order Deferring Further Proceedings and Placing Defendant on Community Supervision is attached and incorporated under attachment A. Petitioner has fulfilled the conditions of probation, his probationary period was terminated, and he was discharged according to law in 2000. Pursuant to the law in effect at the time of his plea, the terms of Petitioner's probation did not include any requirement as to notification or registration as a sex offender. *Id.*

Attached under attachment E is the College Station Police Department Offender Compliance Unit's notice to inform Petitioner that effective September 1, 1999, under Article 62.06 Subsection (b) of the Texas Code of Criminal Procedure, a requirement existed to verify annual registration. The notice from the State made clear that the obligation is a lifetime requirement; the failure to verify annual resignation will be deemed a felony offense.

B. "In Custody" requirement

28 U.S.C. § 2241 requires that an Petitioner for a writ of habeas corpus be "in custody[.]" One may be in custody for habeas purposes notwithstanding actual incarceration. The Supreme Court has held that significant restraints on

liberty are sufficient to meet the custody requirement.[1] The conditions imposed upon Petitioner by the registry statute represent life-time obligations. The restraints upon Petitioner's liberty are numerous and significant; statutory obligations include, but are by no means limited to, in-person registry, DNA testing, and notification of local authorities whenever registrant plans to remain in a location for more than seven (7) days. TEX. CRIM. PROC. Art. 62. Failure to register and/or renew registration results in a felony charge. *Id.*

The State of Texas, having imposed these requirements upon the Petitioner, is the proper respondent to this petition.

C. Exhaustion of State Court Remedies.

Before presenting a petition for habeas corpus in federal court, an Petitioner must have exhausted his state court remedies.[2] In order to exhaust his state court remedies, Petitioner must have presented the issue(s) for which he petitions for habeas relief to the courts of the state in which he is confined. *Id.* Petitioner submitted all issues which are herein presented to the courts of the State of Texas. (*See* attachment A.) Petitioner has exhausted his

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[1] *Rumsfeld v. Padilla*, 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed.2d 513, 72 USLW 4854 (2004), *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733 (5th Cir.2005); *Carafas v. LaVallee*, 391 U.S. 234, 88 S.Ct. 1556 (1968).

[2] 28 U.S.C.A. § 2254; *Carey v. Saffold*, 536 U.S. 214, 122 S.Ct. 2134 U.S., 2002; *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973); *Picard v. Connor*, 404 U.S. 270, 275-76 (1971).

state court remedies as of July 30, 2005. (*See* attachment D.)

D. The Law at Issue.

The application of Chapter 62, TEX. CRIM. PROC. to Petitioner/Petitioner herein represents an ex post facto application and a violation of Petitioner's equal protection and substantive and procedural due process rights. Subsequent to Chapter 62's enactment, conduct or offenses committed before, on, or after the effective date of the statutory provisions subject individuals to registry requirements.

At the time of Petitioner's plea in 1999, the statute had not yet been amended to include the offenses requiring registry under the Chapter.

Chapter 62 requires:

i. Registration with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days (art. 62.051(a) TEX. CRIM. PROC.). Registration includes providing a name, date of birth, height, weight, home address, social security number, driver's license number, shoe size, a recent color photograph, or digital image and complete set of fingerprints, the type of offense committed, age of the victim, date of conviction, and punishment received. The registrant must also indicate each license which the registrant either holds or seeks (including licenses necessary for participation in any profession, occupation, or business.) Registrant must report to the local law enforcement agency in person in order to verify information in the registration form; proof of

residence and identity are required in order to verify. TEX. CRIM. PROC. art. 62.051(f)

ii. Registration until the death of the registrant (lifelong obligation), except in certain cases where the offense was committed by a juvenile (whose case was transferred from juvenile court to district court) or very young person (eighteen (18) years or younger where the victim was older than twelve (12) years old.) (TEX. CRIM. PROC. Art. 62.101, 62.301.)

iii. Taking and preserving of at least one DNA sample from registrant by the local law enforcement agency. Art. 62.061 TEX. CRIM. PROC., art. 411.1473 TEX. GOVT. CODE.

iv. Posting of web-site by the Department of Public Safety (art. 62.08, TEX. CRIM. PROC.).

v. Criminal penalty for the failure to register and failure to comply with an requirement of this Chapter (state jail felony for failure to register; third degree felony if the actor is a person whose duty to register expires under article 62.12(a) and who is required to verify registration once each 90-day period under article 62.06; second degree felony for a person whose duty to register expires under article 62.12(a) and who is required to verify registration once each 90-day period under article 62.06; an enhancement provision if person has previously been convicted. TEX.CRIM.PROC. Art. 62.102

vi. Applicability provision. "This chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970." *See* Art. 62.002, TEX. CRIM. PROC.

E. Why The Matter is Ripe for Consideration

The Texas Court of Criminal Appeals dismissed the writ and wrote that Petitioner's conditions have not yet been revoked. This position misreads the writ and does not take into account the fact that Petitioner remains confined by virtue of the conditions that have been imposed upon him. The United States Supreme Court, as well as Texas courts, have espoused a generous definition of the custody or restraint that is necessary to catalyze issuance of the writ; actual incarceration is not requisite. Restraints on liberty are sufficient. *Rumsfeld v. Padilla,* 542 U.S. 426, 124 S.Ct. 2711, 159 L.Ed.2d 513, 72 USLW 4854(2004), *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733 (5th Cir.2005); *Carafas v. LaVallee*,391 U.S. 234, 88 S.Ct. 1556 (1968). *Ex parte Williams*, 690 S.W.2d 243 (Tex. 1985.) In Williams, the court stated that: "[i]t is not required that the Petitioner for a writ of habeas corpus be actually confined in a jail. Any character of restraint which precludes absolute and perfect freedom of action will justify the issuance of the writ." *Id* at 244, *citing Ex parte Calhoun,* 91 S.W.2d at 1048, This liberal construction was explained by one Texas court as follows: "[t]he rationale is that imprisonment is not merely a speculative possibility, where the unfolding of events may render the controversy moot." *Ex parte Hughey*, 932 S.W.2d 308 (Tex.App. – Tyler 1996).

Petitioner's liberty is restrained by the additional requirements that have been imposed upon him by virtue of the registration requirement. Petitioner must provide a litany of information to the local law enforcement authorities, such as his social security and driver's license number, and including such information as his shoe size. TEX. CRIM. PROC. Art. 62.051. Petitioner must provide this

information to authorities within a week of arriving in any area in which he intends to reside for a period of longer than seven (7) days. *Id.*

F. Supreme Court's Pronouncements.

In *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160, 538 U.S. 1 (2002) and *Smith v. Doe*, 123 S.Ct. 1140, 538 U.S. 84 (2002), the Supreme Court was faced with challenges to the registration laws in both Connecticut and Alaska. In *Connecticut Department of Public Safety v. Doe*, Chief Justice Rehnquist, in delivering the opinion of the Court, upheld the Connecticut statute and rejected the Petitioner's argument that the statute violated principles of due process. (*supra* at 1163-1164). In *Smith v. Doe*, the Court affirmed Alaska's statute, holding that it did not violate the Ex Post Facto Clause of the United States Constitution. It should be noted that neither of these cases are on point with the instant case; the statutes are dissimilar and the Petitioners not similarly situated, which renders the Court's analyses in these opinions non-binding.

In *Connecticut Department of Public Safety v. Doe*, the Petitioner was a convicted sex offender, and argued that his right to procedural due process had been violated. Petitioner's rationale for this assertion consisted of the fact that he was classified as a "dangerous sex offender" on the centralized (and publicly accessible) database maintained by the Connecticut Department of Public Safety; Petitioner maintained that he should have been afforded a hearing prior to the publication of this information in order to determine whether he was currently dangerous. *Connecticut Department of Public Safety*, 123 S.Ct. 1160 at

1162-1165. Connecticut's sex offender registry requirement, however, did not make a distinction between dangerous and non-dangerous offenders; thus, the *Connecticut* Petitioner would have been subjected to registry and listing on the sex offender's database whether or not he had been afforded a hearing. *Id.* The Court thus found the *Connecticut* Petitioner's argument of a procedural due process violation to be ineffective, as his asserted point was immaterial under the statute and would have had no practical effect had it been conceded by the Court; the Court stated that said argument could perhaps have been more effectively framed as a substantive (rather than procedural) due process violation. *Id.*

Clearly, *Connecticut v. Department of Public Safety* is not on point with the case at bar. The Connecticut Petitioner's argument was relatively inconsequential in terms of the statute; even had his argument been deemed effective it would have had little or no effect. Petitioner's procedural due process argument here, as detailed *infra*, if it were successful would have the effect of reducing the term of his registration requirement. Petitioner also asserts a substantive due process violation; the Connecticut court did state in dicta that such an argument could have been effective in that case.

In *Smith v. Doe*, 123 S.Ct. 1140, 538 U.S. 84 (2002), the Court found that the Alaska Sex Offenders Registration Act requiring registration of sex offenders did not violate the Ex Post Facto Clause of the United States Constitution. The Court performed its Ex Post Facto analysis by first examining the Alaskan legislature's intent, for which the Court looked to the language of the statute itself. *Id.* at 1146, 1147. The Court found that the legislative intent had been to create a statute of a civil and

remedial nature, and thus the statute was not in violation of the Ex Post Facto clause.

In order to determine whether the effects of the statute were not so clearly punitive as to override this intent, they examined four factors: first, whether the law had been regarded in our history and traditions as a punishment; second, whether the law imposed an affirmative disability or restraint; third, whether the law had a rational connection to a nonpunitive purpose; and fourth, whether the law was excessive with respect to this purpose. *Id.* at 1148-1154. The second and fourth factors in this analysis illustrate the factual differences between *Smith v. Doe* and the instant issue.

The *Smith* Court overturned the lower court's finding that continuous registration requirements imposed an "affirmative disability" on registrants (*id.* at 1151, 1152); the Court relied largely on the fact that the Alaska statute did not have a requirement of in-person registration. The Texas statute at issue here has a requirement of in-person registry. TEX. CRIM. PROC. art. 62.051(f).

Additionally, with regard to the fourth *Smith v. Doe* factor, the Court mentioned that the length of time for which offenders must register under the Alaska statute was not excessive (total length of time differs under the Alaska statute depending on the degree of offense; most offenses allow cessation of registration after fifteen (15) years.) *Smith v. Doe* at 1152.

Texas' registration statute, however, requires lifetime registration for all offenders, regardless of the degree of offense, with only a very narrow exception for juvenile offenders (whose proceedings were transferred from juvenile court) and offenders aged eighteen (18) years or

younger (where the victim was older than thirteen (13) years of age. TEX. CRIM. PROC. Art. 62.101, 62.301. All other offenders must register for life. A relevant note at this juncture is that Petitioner here would have been able to terminate his registration after fifteen (15) years, had he been subject to Alaska's statutory regime. *See* AK CODE CRIM. PROC. §§ 12.63.010, 12.63.100 (registration requirements and exceptions, definitions of offenses which require lifetime registration), *See also* TEX. CRIM. PROC. § 62.051 (registration requirements), TEX. PEN. CODE §21.11 Penal Code (Definition of Indecency With a Child.)

G. Ex Post Facto, Equal Protection, Substantive Due Process

i. Ex Post Facto

According to the U.S. Constitution's Article I Sections 9 and 10, neither the federal government nor the state governments are to pass an ex post facto law. The Supreme Court subsequently defined the term "ex post facto law" as: '[e]very law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.' *Calder v. Bull,* 3 U.S. 386, 390 (1798). Additionally, the qualifiers disallowing ex post facto laws provide absolute exclusion: "[n]o bill of attainder or ex post facto law shall be passed" and "**[n]o State shall** . . . . pass any Bill of Attainder, ex post facto law. . . ." U.S. Const. Art. I Sec. 9, 10 [emphasis added].

The Supreme Court circumvented this absolute in *Smith v. Doe* by deeming the registration requirements non-punitive. The Alaskan statute was challenged under the Ex Post Facto Clause of Article I, § 10, cl. 1, of the Constitution and the Due Process Clause of the Fourteenth

Amendment. Like the Texas statute, the Alaska statute is codified in the State's criminal procedure code; in this context, the Court found, "[a]lthough some of these provisions relate to criminal administration, they are not in themselves punitive." *Id.* at 1148.

This ignores the very real effects of the requirements on offenders. One could hardly logically argue, for instance, that a sentence of probation or the terms and conditions of parole have no punitive aspects. The *Smith v. Doe* Court rejected this argument by noting that:

> "Probation and supervised release entail a series of mandatory conditions and allow the supervising officer to seek the revocation of probation or release in case of infraction. [. . . .] A sex offender who fails to comply with the reporting requirement may be subjected to a criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. It suffices to say the registration requirements make a valid regulatory program effective and do not impose punitive restraints in violation of the *Ex Post Facto* Clause." *Id.* at 1151.

Thus the Court draws the distinction on the basis of the fact that the charge associated with failure to register is distinguishable from the original charge. It should be noted here that the conditions imposed by the Texas statute do entail a series of mandatory reporting requirements, and also allow the supervising officer to seek to

revoke the registrant's freedom through imposition of a felony charge. TEX.CRIM.PROC. Art. 62.102.

Additionally, this argument ignores the fact that, as Justice Stevens noted in his dissenting opinion (*Smith v. Doe* at 1157), persons required to register under sex offender laws are often subject to assaults, loss of jobs and housing, and threats. Stevens also noted that registration requirements are "comparable to the duties imposed on other convicted criminals during periods of supervised release or parole." *Id.*

Finally, the instant case is distinguishable in that the reporting requirements under the Texas statute are imposed for life (with the narrow exception for juveniles and young offenders noted *infra.*) TEX.CRIM.PROC. Art. 62.101. Also as noted previously, under the Alaska statute at issue in *Smith v. Doe,* Petitioner would have been subject to a 15-year reporting requirement, as opposed to his current lifetime obligation under the Texas statute. Such a lifetime obligation is clearly punitive; additionally, application to Petitioner of the *Smith* Court's analysis to Petitioner's circumstances in this case also presents an equal protection issue.

As an aside, although the Supreme Court has noted that "[m]ere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest" *Connecticut v. Department of Public Safety* at 1162, citing *Paul v. Davis,* 424 U.S. 693, there are two important points to note at this juncture. First, sex offender registration requirements do not constitute "mere injury to reputation"; there are numerous mandatory reporting obligations imposed upon registrants. Where such requirements have been imposed for a lifetime, it seems overly euphemistic to

refer to them as "mere." Second, whether or not a liberty interest has been infringed upon is not a necessary part of an ex post facto violation analysis.

ii. Equal Protection

In *Connecticut Department of Public Safety v. Doe,* supra at 1166, Justices Souter and Ginsburg, in their concurring opinion, explained that the contours of the Equal Protection Clause are implicated when a legislature draws a line of distinction between "offenders who are sensibly considered eligible to seek discretionary relief from the courts and those who are not is, like all legislative choices affecting individual rights, open to challenge under the Equal Protection Clause."

In *Smith v. Doe* the opinion of the Court was delivered by Justice Kennedy. Again, the Smith decision concerned a challenge to the Alaska statute. The Alaska law contained two components: a registration requirement and a notification system. *Supra at 1145.*

In context of the Alaska's statute criminal prosecution surrounding the failure to register, Justice Kennedy explained,

> A sex offender who fails to comply with the reporting requirement may be subjected to criminal prosecution for the failure, but any prosecution is a proceeding separate from the individual's original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion. *Id.* at 1152.

The Alaska statute, unlike Texas', differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense for purposes of duration of registration.[3]

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[3] Relevant to the Equal Protection issue discussed here and specifically with regard to the distinction in duration of registry requirements for aggravated vs. non-aggravated offenses is that Petitioner's offense (indecency with a child, V.T.C.A., Penal Code § 21.11) is classified under Texas' statutory scheme as a "sexually violent offense." TEX. CRIM. PROC. art. 62.001(6)(A). The offense of "indecency with a child" is defined under the statute as follows:

> "(a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex, the person:
>
> (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
>
> (2) with intent to arouse or gratify the sexual desire of any person:
>
> (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or
>
> (B) causes the child to expose the child's anus or any part of the child's genitals.
>
> (b) It is an affirmative defense to prosecution under this section that the actor: (1) was not more than three years older than the victim and of the opposite sex;
>
> (2) did not use duress, force, or a threat against the victim at the time of the offense; and
>
> (3) at the time of the offense:
>
> (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
>
> (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.
>
> (c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person,

(Continued on following page)

In dissent, Justice Stevens explained that he believed "registration and publication are permissible components of the punishment for this category of crimes, however, for those convicted of offenses committed after the effective date of such legislation, there would be no separate procedural due process violation so long as the defendant is provided a constitutionally adequate trial." *Id.* at 1158.

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including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree." *Id.*

Clearly, the statute does not on its face require the element of violence or threat of violence. Connecticut's definition of "sexually violent offense" requires forced sexual intercourse and violence or threat. C.G.S.A. § 54-250. Alaska's statutes do not define sex offenses as "violent" but use the term "aggravated." Alaska's aggravated offenses are, like Connecticut's sexually violent offenses, essentially definitions of rape; that is, they require sexual intercourse induced by force, violence, or threat thereof. AK CRIM. PROC.

The difference between Texas' sex offender statute and the laws of Alaska and Connecticut is thus not only that Alaska and Connecticut allow for termination of registration after fifteen (15) and ten (10) years (as discussed *supra*) respectively for non-aggravated and nonviolent offenses, but that they define aggravated and violent offenses differently. That is, under either the Alaska or Connecticut statutory scheme, Petitioner in the instant case would not be classified as a violent or aggravated offender. It is apparent that the definition of the charge to which Petitioner pled *nolo contendere* does not contain any element of violence; yet it is classified as a "sexually violent offense" under Texas law. Petitioner is treated differently than similarly situated individuals under different state law schemes; it thus seems misguided to use the ex post facto and due process analyses which have been used to examine substantially and materially dissimilar statutory schemes.

The Texas statute excludes and does not provide procedural protection for those who were convicted after 1970 and/or before the imposition of the Act, as well as adult offenders and offenders nineteen (19) years of age and older.

There exists no rational connection between the duration of the reporting requirements for some, but not for others. The *Smith v. Doe* Court stated of the Alaska statute that: "While the Act does differentiate between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense, these broad categories and the reporting requirement's corresponding length are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." *Id.* at 1144.

Conversely, in the case at bar, there exists no reasonable relationship between the danger of recidivism and the allowance of exclusion of those offenders before 1970. Said offenders may still be relatively young; for instance, hypothetically, an offender who was twenty (20) years of age in 1969 would now be fifty-six (56) years of age. Said offender's age would presumably not prevent him or her from a repeated offense. Indeed, the *Smith v. Doe* Court noted that "[e]mpirical research on child molesters, for instance, has shown that, "[c]ontrary to conventional wisdom, most reoffenses do not occur within the first several years after release," but may occur "as late as 20 years following release.'" *Id.* at 1153, citing National Institute of Justice, R. Prentky, R. Knight, & A. Lee, U.S. Dept. of Justice, Child Sexual Molestation: Research Issues 14 (1997).

Additionally, the Texas statute allows for termination of registration requirements in some instances where the registrant was either a juvenile or younger than nineteen (19) at the time of the offense, and the victim was older than thirteen (13). Consequently, an offender who at eighteen (18) years of age molested a thirteen (13) year old child may be allowed to terminate his or her registration requirements. Additionally, under the law as it stands, a juvenile whose case was transferred from juvenile court may terminate registration after ten (10) years. Under this provision, an individual might be sixteen (16) years old and molest a three (3) year old; regardless, said individual would be able to terminate his or her registration at the termination of ten (10) years' time. The disparity in registration requirements and exemptions thus clearly does not exist by virtue of any reasonable relation to the danger of recidivism.

iii. Substantive Due Process/Procedural Due Process

In *Fisher v. State*, 2003 WL 22973479 (Tex.App. – Corpus Christi 2003), the Corpus Christi Court of Appeals, in discussing due process explained:

> Due process contains a substantive component that bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them."
>
> Zinermon v. Burch, 494 U.S. 113, 125 (1990); see also Salerno, supra, 481 U.S. at 746; Daniels v. Williams, 474 U.S. 327, 331 (1986). Freedom from bodily restraint has always been at the core of the liberty protected by due process from arbitrary governmental action. *Youngberg v. Romeo,* 457 U.S. 307, 316 (1982). "It is clear

> that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Jones v. United States*, 463 U.S. 354, 361 (1983). We should never "minimize the importance and fundamental nature" of the individual's right to liberty. *Salerno*, 481 U.S., at 750; *Foucha,* 504 U.S. at 79-80. Texas's highest criminal court recently held, together with the majority of states, that to give effect to a Petitioner's right to counsel and his right to test the legality of his arrest in the extradition context, he must be sufficiently competent to consult with his counsel. *Ex parte Potter*, 21 S.W.3d 290, 296-97 (Tex.Crim.App. 2000). "Given that an alleged fugitive is entitled to counsel and entitled to challenge the legality of his arrest and assert defenses on the basis of which the extradition warrant may be dismissed, the accused must be sufficiently competent to discuss with his counsel facts relating to the limited defenses that may be raised." *Id.* (citations omitted); *Ake v. Oklahoma,* 470 U.S. 68, 77 (1985) (due process requires the state to grant indigent access to basic materials integral to building of effective defense).

Substantive due process is implicated by the nature of the Texas reporting exceptions found in the Texas statute (offenses committed before 1970 and age at the time of the offense.)

In context of the case at bar, Defendant is denied his right to procedural due process because the statute does not allow a means by which Defendant can carve an exception to the strict contours of lifetime reporting requirement imposed by the statute. Such restrictions deny Defendant his rights under the Texas Constitution

(Article 1, Section 10, Texas Constitution) and the United States Constitution (due process, substantive and procedural.) In addition, Defendant contends that his equal protection rights are violated herein because of the contours and restrictions imposed.

In conclusion, it is appropriate to note the axiological commonality in the philosophical underpinnings of the Ex Post Facto clause as well as the principles of equal protection and due process; that is, quite simply, fundamental fairness. Petitioner chose to avoid the stigmatic consequences of a trial by entering a plea of *nolo contendere,* at a time before he could possibly have anticipated the consequences of such a plea. It would, arguably, be expanding the parameters of the concept of fundamental fairness to assert that Petitioner should be afforded a new trial altogether. However, it seems consistent to afford some procedural protections in the interest of avoiding the obligation imposed by a mandatory lifetime reporting requirement.

## V. PRAYER

16. Petitioner prays that this Court issue a writ of habeas corpus, set this application for hearing, and enter an order granting Petitioner/Petitioner's relief, thereby discharging him from the reporting obligation in light of the violation of Petitioner's/Petitioner substantive due process rights, equal protection and the ex post facto application of the statutory provisions in question.

DATE: December 21, 2005.

Respectfully submitted,

/S/ Anthony P. Griffin
ANTHONY P. GRIFFIN
ANTHONY P. GRIFFIN, INC.
LAWYERS
1115 MOODY
GALVESTON, TEXAS 77550
409.763.0386
1.800.750.5034
FACSIMILE NO. 409.763.4102

STATE BAR NO. 08455300

ATTORNEYS FOR APPLICANT
STEPHEN LOUIS STARK

## OATH OF PETITIONER

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

**BEFORE ME**, the undersigned authority personally appeared STEPHEN LOUIS STARK, known to me to be the person whose name is subscribed to the following instrument and having been duly sworn upon his oath, deposes and states as follows:

"My name is STEPHEN LOUIS STARK. I am over (18) years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

The allegations contained in the attached application for writ of habeas corpus are true and correct, according to

my belief. I also swear and affirm that the attachments are true and correct copies of documents tendered to me during the above proceedings and represent what they purport to represent.

Further, Affiant saith not.

/S/ Stephen L. Stark
Signature

/s/ Stephen L. Stark
Printed Name

SUBSCRIBED AND SWORN TO before me this 21st day of December, 2005.

/s/ RITA WESTERMAN
NOTARY PUBLIC IN AND
FOR STATE OF TEXAS

MY COMMISSION EXPIRES:
5.28.2006

CERTIFICATE OF SERVICE

It is certified that on this the 21st day of December, 2005, the foregoing filing was forwarded to counsel for the counsel by mailing the same to opposing counsel by certified mail, return receipt requested, postage prepaid, to-wit:

BILL TURNER
BRAZOS COUNTY DISTRICT ATTORNEY

DOUGLAS HOWELL, III
ASSISTANT DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
BRAZOS COUNTY COURTHOUSE
300 EAST 26th STREET, SUITE 310
BRYAN, TEXAS 77803

CERTIFIED MAIL, RRR NO. 7004 0750 0000 6525 5547

/S/ Anthony P. Griffin
ANTHONY P. GRIFFIN

OFFICIAL NOTICE FROM COURT
OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

RE: Writ No. WR-62, 465-01 [POSTMARK]
STYLE: STARK, STEPHEN LOUIS Jul. 29, 2005
TRIAL CT NO: 22876-85-A
7/27/2005

The Court has dismissed your application for a writ of habeas corpus without written order; on the date the application was filed, community supervision had not been revoked. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 1, 3(a)-(b).

RECEIVED JUL 30 2005 Troy C. Bennett, Jr.

STEPHEN LOUIS STARK
C/O ANTHONY P. GRIFFIN
ATTORNEY AT LAW
1115 MOODY
Galveston, TX 77560

CAUSE NO. 22,876-85-A

| | | |
|---|---|---|
| EX PARTE | § | IN THE DISTRICT COURT OF |
| | § | BRAZOS COUNTY, TEXAS |
| STEPHEN STARK | § | 85th JUDICIAL DISTRICT |

ORDER TO TRANSMIT HABEAS CORPUS RECORD
(Post-Conviction Application)

Came on to be considered the Application for Writ of Habeas Corpus, and the Court having considered the same finds that:

1. Applicant has alleged no fact supported by the record which entitles him to relief.

2. Applicant's grounds for relief have no basis in the record and are completely without merit.

3. There are no previously unresolved, controverted issues of fact material to the legality of applicant's alleged disability.

Having found no fact in issue requiring an evidentiary hearing, the Court hereby ORDERS that the District Clerk of Brazos County prepare and transmit the Record herein to the Court of Criminal Appeals and recommends that relief be denied.

It is further ORDERED that the District Clerk shall forward a copy of this Order to the District Attorney's Office and Anthony Griffin, Attorney for Applicant, 1115 Moody, Galveston, Texas 77550.

SIGNED this 13th day of June, 2005.

/s/ J.D. Langley
Judge Presiding

CAUSE NO. 22,876-85-A

| | | |
|---|---|---|
| EX PARTE | § | IN THE DISTRICT COURT OF |
| | § | BRAZOS COUNTY, TEXAS |
| STEPHEN STARK | § | 85TH JUDICIAL DISTRICT |

STATE'S ORIGINAL ANSWER

(Filed May 24, 2005)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas, by and through her District Attorney for Brazos County, Texas, in the above numbered and entitled cause, and respectfully makes its answer as follows:

I.

On June 30, 1993, Applicant committed the offense of Indecency with a Child. (*See* State's exhibit **A** – Indictment). On April 27, 1995, Applicant was placed on deferred adjudication probation for the offense of Indecency with a Child. (*See* State's exhibit **B** – Order Deferring Further Proceedings/Conditions of Community Supervision). Applicant was discharged from probation on May 30, 2000. (*See* State's exhibit **C** – Order).

II.

Respondent denies each and every allegation of fact made by Applicant and demands strict proof of same.

III.

Applicant alleges no fact, which, if true, would entitle him to relief.

IV.

**STATE'S RESPONSE TO APPLICANT'S GROUND NO. 1**

Applicant complains that Tex. Code Crim. Prov. Chpt. 62 violates equal protection. He claims that Article 62.06(b) requires him to verify annual registration for the rest of his lifetime. (Application's Memorandum, pg. 2). He believes that there is a violation where the Texas statute:

> . . . provides exemption for offenses under art. 42.017 (Finding regarding Age-Based Offense), with an affirmative finding that "the exemption does not threaten public safety and that the person's conduct did not occur without the consent of the victim." In addition, the applicability section of Texas' statute (art. 62.11, TEX CRIM. PROC., excepts out reportable offenses occurring on or before September 1970.

(Application's Memorandum, pg. 5).

Applicant's equal protection violation argument has been considered and overruled. *See In re M.A.H.*, 20 S.W.3d 860, 866-867 (Tex. Crim. App. 2003) (equal protection violation argument overruled where defendant treated the same as all similarly situated nonviolent sex offenders for purposes of the duration of the registration requirements).

## STATE'S RESPONSE TO APPLICANT'S GROUND NO. 2

Applicant complains that Tex. Code Crim. Proc. Chpt. 62 violates due process. Again, Applicant's argument has been considered and overruled. *See In re M.A.H.*, 20 S.W.3d 860, 864-866 (Tex. Crim. App. 2003) (due process clause is not implicated where the exemption procedure pertains to different persons and different, albeit similar, criminal conduct).

## STATE'S RESPONSE TO APPLICANT'S GROUND NO. 3

Applicant complains that requiring him to verify annual registration for life constitutes an ex post facto violation. He claims that "[p]ursuant to the law in effect at the time of his plea, the terms of Applicant's probation did not include any registration requirement as to notification or registration as a sex offender." (Application's Memorandum, pp. 1-2). Applicant is mistaken. At the time of his plea, Article 6252-13c-1, Revised Statutes,[1] [2] provided for sex offender registration. Moreover, Applicant was required to register as a condition of his probation. (*See* State's exhibit **B** – Conditions of Community Supervision – item 25). Finally, Applicant's ex post facto argument has been considered and overruled. *See Rodriguez v. State*, 93 S.W.3d 60, 79 (Tex. Crim. App. 2003) (no Ex Post Facto Clause violation because the registration requirement was

---

[1] Article 6252-13c-1, Revised Statutes, was enacted September 1, 1991. *See* 72nd Leg., R.S., ch. 572.

[2] Article 6252-13c-1, as amended, was redesignated as Tex. Code Crim. Proc. Chpt. 62 on September 1, 1997. *See* 75th Leg., R.S., ch. 668.

remedial in nature, and did not impose punishment for constitutional purposes).

WHEREFORE, PREMISES CONSIDERED, the State respectfully prays that this Court deny the relief requested by the Applicant.

Respectfi `ly Submitted,
BILL TURNER
District Attorney
Brazos County, Texas

/s/ Douglas Howell
Douglas Howell, III
Assistant District Attorney
Brazos County Courthouse
300 E. 26th Street, Suite 310
Bryan, Texas 77803
(979) 361-4320
State Bar No. 10098100

**Certificate of Service**

I do hereby certify that a true and correct copy of State's Original Answer was delivered to Anthony Griffin, Attorney for Applicant, 1115 Moody, Galveston, Texas 77550 on this the 23 day of May, 2005.

/s/ Douglas Howell

**STATE'S EXHIBIT A**

THE STATE OF TEXAS

VS.

STEPHEN LOUIS STARK

RACE: WH
SEX: M
AGE: 50
DOB: 02/03/44
HT: 6'01" WT: 205
HAIR: GRAY EYES: BRWN
WARRANT CID 23641597
DA COMPLAINT #007161
BOOK NO. 44388

CAUSE NO. 22,876-85
CHARGE INDECENCY WITH A CHILD X2

JUSTICE COURT NO. AD-352-F

AGENCY CSPD
OFFENSE CODE: 211101

---

(Filed Apr. 7, 1994)

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Brazos County, State of Texas, duly organized at the April Term, 1994, of the ~~85~~th/272nd/~~301st~~ District Court of said County, in said Court, at said term, do present that in the County of Brazos and State of Texas one STEPHEN LOUIS STARK

hereinafter referred to as the Defendant, heretofore on or about June 30, 1993, did

> then and there intentionally, with the intent to arouse and gratify the sexual desire of said defendant, engage in sexual contact by touching the breast of C.S., a child younger than 17 years and not the spouse of the defendant,

[waived 4/27/95] ~~COUNT TWO: and it is further presented in and to said Court, that the said STEPHEN LOUIS STARK, in the County of Brazos and State of Texas on or about the 30th day of June 1993 did then and there intentionally, with the intent to arouse and gratify the sexual desire of said defendant, engage in sexual contact by touching the genitals of C.S., a child younger than 17 years and not the spouse of the defendant.~~

AGAINST THE PEACE
AND DIGNITY OF THE
STATE.

/s/ Sherilyn Carroll
Foreman of the Grand Jury

Grand Jury Witness:
R. Van Nost

---

**STATE'S EXHIBIT B**

2nd degree

TRN: _____ TRS: _____ BAC: _____ SID: _____ Arresting Agency/Date: _____ DPS Offense Code: _____

NO. 22,876-85

THE STATE OF TEXAS )( IN THE 85th Judicial District

VS. )( OF

Stephen Louis Stark )( BRAZOS COUNTY, TEXAS

## ORDER DEFERRING FURTHER PROCEEDINGS AND PLACING DEFENDANT ON COMMUNITY SUPERVISION

(Filed May 18, 1995)

On March 23, 1995, the above entitled and numbered cause being called for trial, the State appeared by Assistant State's Attorney Beth Ann Smith, and the defendant appeared in person and (by Counsel, Jim James) (knowingly, intelligently, and voluntarily waived the right to be represented by counsel after having been advised by the Court of the dangers and disadvantages of self representation), and both parties announced ready for trial. The defendant, in person and in writing, in open court waived the right of trial by jury; such waiver was consented to by the Court and by the attorney representing the State, and is now entered of record on the minutes of the Court. The defendant pleaded (~~guilty~~) (nolo contendere) to the charge contained in the (~~information~~) (indictment). [DJB]

Thereupon the defendant was admonished by the Court as follows: of the range of punishment attached to the offense; of the fact that any recommendation of the State as to punishment was not binding on the Court; that if the punishment assessed by the Court did not exceed the punishment recommended by the State and agreed to by the defendant and defense counsel, the Court must give its permission for the defendant to prosecute an appeal as to any matter in the case, except for those matters raised by written motions filed prior to trial; that if the Court rejected the plea agreement the defendant would be allowed to withdraw the plea, and any statement made by the defendant at the hearing would not be admissible against the defendant, nor would the fact of the guilty/nolo contendere plea be admissible against the defendant in

any subsequent criminal proceeding; and that if the defendant is not a citizen of the United States a plea of guilty or nolo contendere for the offense charged may result in deportation, exclusion from admission to this country, or the denial of naturalization under federal law.

The Court admonished the defendant of the possible consequences of a violation of community supervision in the event that the Court finds that the evidence substantiates the defendant's guilt of the offense charged and defers such a finding of guilt, such consequences including: upon allegation of a violation of community supervision the defendant may be arrested and detained; no appeal may be taken from the Court's determination to proceed with an adjudication of guilt; and after adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and appeal continue as if the adjudication of guilt had not been deferred.

The defendant, in open court, waived in writing the appearance, confrontation and cross examination of witnesses; consented to the stipulation of evidence and the introduction of evidence by affidavits, written statements of witnesses, and any other documentary evidence; and such waiver and consent were approved by the Court in writing and filed in the papers of this cause. It plainly appearing [sic] to the Court that the defendant was mentally competent and that the plea was freely and voluntarily entered, said plea was accepted and entered of record.

The Court, having heard the defendant's plea, the evidence submitted, and argument of counsel, found that the evidence substantiates that the defendant is guilty of the offense of indecency with a child, a (~~misdemeanor~~) (felony),

and that said offense was committed on June 30, 1993. However, the Court after due consideration is of the opinion that the best interests of society and the defendant will be served by deferring further proceedings in this cause and placing the defendant on community supervision under the supervision of the Court. [BCM]

It is therefore ordered that further proceedings in this cause be deferred without entry of a judgment of guilt against the defendant, and that the defendant be and is hereby placed on community supervision on April 27, 1995, for a period of five (5) years, beginning on this date, under the supervision of the Court and the duly appointed and acting community supervision officer of Brazos County, Texas, provided that the defendant shall comply with the conditions of community supervision attached hereto:

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NO. 22,876-85

| | |
|---|---|
| THE STATE OF TEXAS | )( IN THE 85th Judicial District |
| VS. | )( OF |
| Stephen Louis Stark | )( BRAZOS COUNTY, TEXAS |

**CONDITIONS OF COMMUNITY SUPERVISION**

(Filed May 18, 1995)

In accordance with Article 42.12 of the Texas Code of Criminal Procedure, you have been placed on community supervision on April 27, 1995, for a period of five (5) years, for the offense of indecency with a child. It is the order of the Court that you comply with the following conditions of community supervision:

(1) Commit no offense against the laws of this State or any other State or of the United States or of any governmental entity, and report to your community supervision officer within 48 hours if arrested or questioned by a law enforcement officer;

(2) Report to the supervision officer at the Brazos County Community Supervision and Corrections Department as directed by the Court and your supervision officer, at least once each calendar month, beginning immediately and continuing until you are discharged from community supervision, and obey all rules and regulations of said department;

(3) Avoid injurious and vicious habits, refrain from using alcoholic beverages to excess, and abstain from the use of any harmful substance, narcotic drug, or other controlled substance in any form – except as prescribed by a licensed physician for legitimate medical purposes; and at the request of your supervision officer you will freely cooperate and voluntarily submit to medical and/or chemical tests and examinations for the purpose of determining whether you are using, or are under the influence of alcohol, narcotic drugs, or any other controlled substance;

(4) Permit your supervision officer to visit you at your home or elsewhere; report to your supervision officer any change of address or marital status within 48 hours; and remain within Brazos County, Texas, (_____) unless you have first received the written permission of the Court to leave the county;

(5) Work faithfully at lawful employment and notify your supervision officer within 48 hours of any change in said employment; support your dependents that you now have or that you may acquire during the term of this

community supervision; and report the sources and amounts of all income or money received and all debts and expenditures to your supervision officer as directed;

(6) Avoid persons and places of harmful and disreputable character, including but not limited to, knowingly or voluntarily associating with any person previously convicted of a crime, or being present at any location where a criminal act is being committed; and do not enter into any agreement to act as "informer", or special agent for any law enforcement agency;

(7) Pay a fine, if one be assessed, and the costs of Court in one or several payments; in addition, pay appointed attorney fees, and make restitution in any amount the Court shall determine, to wit: $3,282.00 restitution, $ ---- attorney fees, $97.50 court costs, $___ fine, ($5.00) (___) Crime Stoppers fee, and $---- substance abuse evaluation fee. The unpaid total of $3384.50 shall be paid in equal monthly installments of $40.00 payable on the first day of every month, beginning in the month next following entry of this order and continuing until paid in full;

(8) Pay to the Brazos County Community Supervision and Corrections Department a supervision fee of $40.00 per month, every month of the community supervision term, payable on the first day of every month, beginning in the month next following entry of this Order;

And furthermore, during the term of this community supervision you shall strictly follow and observe the following marked terms and conditions:

___ (9) Abstain from the use or possession of alcoholic beverages in any form, and do not go on any premises where alcoholic beverages are served;

___ (10) Within 180 days of the date of this order you will enroll in, pay for, and successfully complete an alcohol education program authorized by Article 42.12, Texas Code of Criminal Procedure, and designed to rehabilitate (repeat) driving while intoxicated offenders;

___ (11) Within 30 days of the date of this order you will have an alcohol ignition interlock system installed in your vehicle for a period of ___ months/years, at your own expense. In addition, you will only operate a vehicle equipped with an alcohol ignition interlock system during the specified time period, unless driving a company owned vehicle with your conviction being known by your employer.

___ (12) Within 180 days of the date of this order you will enroll in, pay for, and successfully complete a drug offender education course authorized by Article 6687b of Vernon's Texas Civil Statutes;

X (13) Submit to a ~~psychiatric~~/psychological/~~substance abuse~~ evaluation or screening at the direction of your supervision officer within 60 days of the date of this order; participate in and pay the costs of any treatment program recommended by said evaluation, including attendance at Alcoholics Anonymous or Narcotics Anonymous meetings, and do not attempt to terminate said treatment without the written consent of the treatment team in charge of your case. The community supervision officer is authorized to share the contents of the presentence report in this case with the service provider;

X (14) Perform ~~240~~ hours of community service in the Brazos CORPS Project (___) , said community service shall be performed at a rate of 8 hours per month, beginning in the month next following entry of this order;

___ (15) Report to the Brazos County Sheriff's Department to serve ___ days in the (Brazos County Jail) (State Jail facility) as per order filed;

___ (16) Within 30 days of the date of this order submit to an educational/vocational evaluation as directed by your supervision officer, and participate in any program recommended by that evaluation. This includes any adult learning program, a program teaching persons to speak and/or read the English language, adult basic education, GED classes and certificate acquisition, parenting classes, drug education, vocational programs, and/or job search skills classes. Do not terminate any such program without the consent of the Court or the service provider in charge of your case;

___ (17) Within ___ days of the date of this order you will obtain a valid Texas driver's license and liability insurance;

___ (18) Within ten days of the date of this Order contact the Attorney General's Office to apply for child support enforcement services and/or legitimize your child(ren), and cooperate with efforts to obtain support for your child(ren);

___ (19) Within 30 days of the date of this order you will compose, write, and submit to your supervision officer a letter of apology addressed to ___, the victim of this offense, in care of this Court;

___ (20) During the term of community supervision you will not use nor be a signatory to a checking account;

___ (21) Submit to a curfew and be home by ___ or within 30 minutes of the end of night employment, whichever is later;

X (22) As an alternative to incarceration, you are placed in the Intensive Probation Program;

X (23) Because of the serious nature of the instant offense you will be placed on ( ) intensive supervision, or on the specialized caseload for: ( ) chemically dependent persons; ( ) substance abusers; (XX) sex offenders ( ) SAFPF; ( ) ___, effective immediately, for a period not to exceed two years. During this period you may be required to report on a weekly basis;

X (24) Pay to the BCCSCD a $5.00 fee per month, every month of the community supervision term, for the sexual assault program established in the Health and Safety Code, payable on the first day of every month, beginning in the month next following entry of this order;

X (25) In accordance with the Texas Code of Civil Statues, you are required to register with the appropriate law enforcement authority in the municipality (incorporated town or city) or county where you reside or intend to reside for more than seven days. Registration must be made within seven days following the arrival in the municipality or county, and proof must be provided to your supervision officer within 30 days after you are required to register.

April 27, 1995

/s/ J.D. Langley
Presiding Judge

85th Judicial District

I acknowledge that I have received a copy of my conditions of community supervision, that a supervision officer of

Brazos County has explained the conditions of my community supervision, and that I understand them.

4/27/95
Date

/s/ Stephen L. Stark
Defendant

/s/ [Illegible]
Community Supervision Officer

| Right Thumbprint in Court |
|---|
| [Thumbprint Omitted In Printing] |
| Date/Initials: SLS BCM 4/27/95 |

| Right Thumbprint After Court |
|---|
| [Thumbprint Omitted In Printing] |
| Date/Initials: SLS 4/26/95 |

NO. 22,876-85

THE STATE OF TEXAS )( IN THE 85th Judicial District
VS. )( OF
Stephen Louis Stark )( BRAZOS COUNTY, TEXAS

**ADDITIONAL CONDITIONS OF COMMUNITY SUPERVISION**

(Filed May 18, 1995)

It is the order of the Court that you comply with these additional conditions of community supervision:

XX (26) You will not go to or loiter around any park, swimming pool, public school, or other recreational area where children are likely to be present;

XX (27) You will not attend parties, activities, or functions that are the primary focus of children;

XX (28) You will not associate with any child below the age of 17 unless in the presence of another adult at all times;

XX (29) You will not seek or gain employment, or perform any volunteer work, with any firm or business whose function includes the provision of services to children;

XX (30) Pursuant to Article 42.12, Section 14(B), of the Texas Code of Criminal Procedure, you shall pay all the reasonable costs incurred up to 365 days from the date of this Order by or on behalf of the victim(s), for psychological counseling made necessary by this offense; the Court having found that you are financially able to make said payments.

April 27, 1995

/s/ J.D. Langley
Presiding Judge

85th Judicial District

I acknowledge that I have received a copy of my conditions of community supervision, that a supervision officer of Brazos County has explained the conditions of my community supervision, and that I understand them.

4/27/95
Date

/s/ Stephen L. Stark
Defendant

/s/ [Illegible]
Community Supervision Officer

**STATE'S EXHIBIT C**

No. 22,876-85
Ct 1

THE STATE OF TEXAS () IN THE 85th District Court

VS. () OF

STARK, STEPHEN LOUIS () BRAZOS COUNTY, TEXAS

ORDER DISCHARGING DEFENDANT
FROM COMMUNITY SUPERVISION

(Filed May 31, 2000)

On this date came to be heard the matter of determining whether or not the order granting community supervision in this cause should be reduced or set aside and the defendant discharged from community supervision in the above-numbered cause.

The defendant has completed all of the original period of community supervision.

It is, therefore, ordered by the Court that the original sentence in this cause be modified to conform to the period of community supervision fulfilled by the defendant and the defendant is hereby discharged from community supervision [and the case is dismissed]

5/30, 2000 /s/ J.D. Langley
PRESIDING JUDGE

Cause No. 22,876-85-A
(The Clerk of the convicting court will fill this line.)

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM FINAL FELONY CONVICTION UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

(Filed Apr. 22, 2005)

| Stephen Louis Stark | 2/03/44 |
|---|---|
| NAME OF APPLICANT (Please print full name) | DATE OF BIRTH |
| N/A | N/A |
| PLACE OF CONFINEMENT | TDCJ-ID NUMBER |

(1) What court entered the judgment of conviction you want relief from?

(Give the number and county of the court.)

85th Judicial District Court, Brazos County, Texas

(2) What was the cause number in the trial court? 22,876-85

(3) What was the trial judge's name? J.D. Langley

(4) What was the date of judgment? 03.23.95

(5) What was the length of sentence? five (5) years deferred

(6) Who assessed punishment? (Check one)
(a) Judge (x); (b) Jury ( )

(7) What offense or offenses were you convicted of (all counts)?

indecency with a child

(8) What was your plea? (Check one)

(a) Not guilty ( )
(b) Guilty ( )
(c) Nolo Contendere (x)

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

(9) Did you have a jury trial? (check one)

(a) Jury ( )
(b) Judge only (x)

(10) Did you testify at the guilt/innocence phase of trial?
Yes ( ) No (x)

(11) Did you testify at the sentencing phase of trial?
Yes ( ) No (x)

(12) Did you appeal from the judgment of conviction?
Yes ( ) No (x)

(13) If you did appeal, answer the following questions:

(a) Which court of appeals? N/A

(b) What was the cause Number? _____

(c) What was the decision? _____

(d) What was the date of the decision? _____

(e) Did you file a petition for discretionary review?
Yes ( ) No ( )

(f) If your answer to (e) was "yes," answer the following questions:

(g) What was the cause number in the Court of Criminal Appeals?

N/A

(h) What was the decision? N/A

(i) What was the date of decision? _____

(14) Have you previously filed an application for writ of habeas corpus under Article 11.07 for relief from this conviction?
Yes ( ) No (x)

(15) If your answer to (14) was "yes," answer the following questions:
N/A

(a) What was the Court of Criminal Appeals writ number? _____

(b) What was the decision? _____

(c) What was the date of decision? _____

(d) What is the reason the current claims were not presented and could not have been presented in an earlier application?

N/A

(16) Do you have any petition or appeal pending in any court, either state or federal, attacking the same conviction?
Yes ( ) No (x)

(17) If you are presenting a claim for time credit, have you presented the claim to the time credit resolution system of the Texas Department of Criminal Justice – Institutional Division?
Yes ( ) No ( ) N/A

(a) If your answer to (17) was "yes," answer the following questions:

What was the date of decision? N/A

Why are you not satisfied with the decision? ____

(b) If your answer to (17) was "no," why have you not presented the claim to the time credit resolution system of the Texas Department of Criminal Justice – Institutional Division?

N/A

(18) State *concisely* every ground on which you claim that you are being unlawfully confined. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the grounds.

Substantive due process, equal protection, ex post facto (see memorandum in support of writ attached).

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. The grounds you may raise are not limited to those listed below. However, you should raise in this application all available grounds (relating to this conviction) on which you base your allegations that you are being unlawfully confined.

If you claim one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not simply check any of the grounds listed below.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and empaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

(k) Denial of time credits on sentence.

(l) Improper revocation of parole or mandatory supervision.

(m) Illegal sentence.

(n) Invalid or defective indictment.

(o) No evidence or insufficient evidence.

(A) What is your Ground Number One: equal protection

---

What are the FACTS (tell your story *briefly* without citing cases or law): Applicant is required to report under Chapter 62.01, TEX. CRIM. PROC.; Applicant challenges this statute as a violation of substantive due due process, equal protection and ex post facto. See Memorandum in Support of Writ.

(B) What is your Ground Number Two: substantive due process

What are the FACTS (tell your story *briefly* without citing cases or law): See above; see Memorandum in Support of Writ.

(C) What is your Ground Number Three: ex post facto See above; see Memorandum in Support of Writ

What are the FACTS (tell your story *briefly* without citing cases or law): _____

(D) What is your Ground Number Four: N/A

What are the FACTS (tell your story *briefly* without citing cases or law): _____

Wherefore, applicant prays that the Court grant applicant relief to which he maybe [sic] entitled in this proceeding.

VERIFICATION

(Complete *either* the Oath before Notary Public *or* the Inmate's Declaration)

Oath Before Notary Public

STATE OF TEXAS, COUNTY OF Brazos

Stephen Louis Stark, being first duly sworn, under oath, says: that he is the applicant in this action and knows the content of the above application and according

to the applicant's belief, the foregoing allegations of the application are true.

/s/ Stephen L. Stark
Signature of Applicant

[SEAL]

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of April

/s/ Linda Griffin
Notary Public

Inmate's Declaration

I, _____,
(inmate's name)

_____, being presently incarcerated in
(Inmate's identifying number from TDCJ or county jail)

_____,
(name of TDCJ unit or county jail)

declare under penalty of perjury that according to my belief the foregoing information and allegations of the application are true and correct.

Signed on _____
(date)

_____
Signature of Applicant

/s/ Anthony P. Griffin
Signature of attorney (if any)
ANTHONY P. GRIFFIN, STATE BAR NO. 08455300

Address of Attorney:
1115 Moody, Galveston, Texas 77550
409.763.0386
1.800.750.5034
Facsimile No. 409.763.4102

CAUSE NO. 22,876-85

| | | |
|---|---|---|
| EX PARTE STEPHEN LOUIS STARK | § | IN THE 85th |
| | § | JUDICIAL DISTRICT COURT |
| | § | |
| | § | BRAZOS COUNTY, TEXAS |

**MEMORANDUM IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS**

(Filed Apr. 22, 2005)

**TO THE HONORABLE JUDGE OF SAID COURT:**

Applicant, STEPHEN LOUIS STARK, files this application for writ of habeas corpus pursuant to section 11.072, Texas Code of Criminal Procedure. Applicant brings this challenge under 11.072 in that the procedure is consistent with an additional condition under community supervision, albeit a life-time condition.

Basis for Writ

A. Statement of the proceedings/Procedural History.

1. On March 23, 1995, Applicant entered a plea of nolo contendre on one count of indecency with a child and placed on five years deferred adjudication. The Order Deferring Further Proceedings and Placing Defendant on Community Supervision is attached and incorporated under Tab A. Applicant has fulfilled the conditions of probation, his probationary period was terminated, and he was discharged according to law in 2000. Pursuant to the law in effect at the time of his plea, the terms of Applicant's probation did not include any requirement as to notification or registration as a sex offender. *Id.*

2. Attached under Tab B, C & D is the College Station Police Department Offender Compliance Unit's notice to inform Applicant that effective September 1, 1999 under Article 62.06 Subsection (b) of the Texas Code of Criminal Procedure of the requirement to verify annual registration. The notice from the State makes clear that the obligation is lifetime requirement and the failure to verify annual resignation will be deemed a felony offense.

B. Ripeness of Current Claim.

3. Applicant has not previously filed a writ of habeas corpus. Applicant still suffers from the disability and the requirement imposed by a law that did not exist at the time of Applicant's plea.

C. Ex Post Facto, Equal Protection, Substantive Due Process.

4. The application of art. 62.01, TEX. CRIM. PROC. to Applicant/Petitioner herein represents an ex post facto application and a violation of Petitioner's substantive due process rights. The change in the law made by this Act applies to a person subject to registration under Chapter 62, Code of Criminal Procedure, for an offense or conduct that was committed before, on, or after the effective date of this Act.

5. At the time of Applicant's plea, the statute had not yet been amended to include the offenses under article 62 (1999).

Chapter 62 requires:

i. Registration with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days (art. 62.02 (a); 62.04 (a), TEX. CRIM. PROC.). Registration includes providing a name, date of birth, height, weight, . . . home address, social security number, a recent color photograph, the type of offense committed, etc.

ii. Assignment of risk level and notification of residence in a one-mile radius with a risk level of three. Discretion given to local authority on publication, including web-site publication (art. 62.045(a),(d)), TEX. CRIM. PROC.).

iii. Requirement relating to driver's license or personal identification certificate (art. 62.065, TEX. CRIM. PROC.).

iv. Posting of web-site by the Department of Public Safety (art. 62.08, TEX. CRIM. PROC.).

v. Criminal penalty for the failure to register and failure to comply with an requirement of this Chapter (state jail felony for failure to register; third degree felony if the actor is a person whose duty to register expires under article 62.12(a) and who is required to verify registration once each 90-day period under article 62.06; second degree felony for a person whose duty to register expires under article 62.12(a) and who is required to verify registration once each 90-day period under article 62.06; an enhancement provision if person has previously been convicted.

vi. Applicability provision. "This chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970, except

that the provisions of Articles 62.03 and 62.04 of this chapter relating to the requirement of newspaper publication apply only to a reportable adjudication occurring on or after (1) September 1, 1977, if the conviction or adjudication relates to an offense under Section 43.05, Penal Code; (2) September 1, 1995, if the conviction or adjudication relates to any other offense listed in Article 62.01(5)." See art. 62.11, TEX. CRIM. PROC.

vii. Article 62.12 excepts out certain persons and provides a method by which the duty to register expires.

D. Supreme Court's Pronouncements.

6. In *Connecticut Department of Public Safety v. Doe*, 123 S.Ct. 1160, 538 U. S. 1 (2002) and *Smith v. Doe*, 123 S.Ct. 1140, 538 U.S. 84 (2002), the Supreme Court was faced with challenges to the registration laws in both Connecticut and Alaska. In *Connecticut Department of Public Safety v. Doe*, Chief Justice Rehnquist, in delivering the opinion of the Court, affirmed the Connecticut statute finding that "all sex offenders – currently dangerous or not – must be publicly disclosed" (*supra* at 1163-1164).

The Texas statute does not have the same protection; the Texas statute excludes certain classes of sexual offenders. In fact, Texas statute provides exemption for offenses under art. 42.017 (Finding regarding Age-Based Offense), with an affirmative finding that "the exemption does not threaten public safety and that the person's conduct did not occur without the consent of the victim." In addition, the applicability section of Texas' statute (art. 62.11, TEX. CRIM. PROC., excepts out reportable offenses occurring on or before September 1970.

In *Fisher v. State*, 2003 WL 22973479 (Tex.App. – Corpus Christi 2003), the Corpus Christi Court of Appeals, in discussing due process explained:

> Due process contains a substantive component that bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." Zinermon v. Burch, 494 U.S. 113, 125 (1990); see also Salerno, supra, 481 U.S. at 746; Daniels v. Williams, 474 U.S. 327, 331 (1986). Freedom from bodily restraint has always been at the core of the liberty protected by due process from arbitrary governmental action. Youngberg v. Romeo, 457 U.S. 307, 316 (1982). "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Jones v. United States, 463 U.S. 354, 361 (1983). We should never "minimize the importance and fundamental nature" of the individual's right to liberty. Salerno, 481 U.S., at 750; Foucha, 504 U.S. at 79-80. Texas's highest criminal court recently held, together with the majority of states, that to give effect to a petitioner's right to counsel and his right to test the legality of his arrest in the extradition context, he must be sufficiently competent to consult with his counsel. Ex parte Potter, 21 S.W.3d 290, 296-97 (Tex.Crim.App. 2000). "Given that an alleged fugitive is entitled to counsel and entitled to challenge the legality of his arrest and assert defenses on the basis of which the extradition warrant may be dismissed, the accused must be sufficiently competent to discuss with his counsel facts relating to the limited defenses that may be raised." Id. (citations omitted); cf. Ake v. Oklahoma, 470 U.S. 68, 77 (1985) (due process requires the state to grant indigent access to basic materials integral to building of effective defense).

Substantive due process is implicated by the nature of the Texas reporting exceptions found in the Texas statute (time and age). In addition, the Texas statute "implicitly" imputes dangerous as a condition of inclusion (the legislature allows an exception under an affirmative finding by the trial court).

In *Connecticut Department of Public Safety v. Doe*, supra at 1166, Justices Souter and Ginsburg, in their concurring opinion, explained that the contours of the Equal Protection Clause are implicated when a legislature draws a line of distinction between "offenders who are sensibly considered eligible to seek discretionary relief from the courts and those who are not is, like all legislative choices, affecting individual rights, open to challenge under the Equal Protection Clause".

In *Smith v. Doe* the opinion of the Court was delivered by Justice Kennedy. Again, the Smith decision concerned a challenge to the Alaska statute. The Alaska law contained two components: a registration requirement and a notification system. *Supra at 1145.*

The Alaskan statute was challenged under the Ex Post Facto Clause of Article I, § 10, cl. 1, of the Constitution and the Due Process clause of the Fourteenth Amendment. Like the Texas statute, the Alaska statute is codified in the State's criminal procedure code; in this context, the Court found, "[a]lthough some of these provisions relate to criminal administration, they are not in themselves punitive." *Id.* at 1148.

In context of the Alaska's statute criminal prosecution surrounding the failure to register, Justice Kennedy explained,

> A sex offender who fails to comply with the reporting requirement may be subjected to criminal prosecution for the failure, but any prosecution is a proceeding separate from the individual's original offense. Whether other constitutional objections can be raised to a mandatory reporting requirement, and how those questions might be resolved, are concerns beyond the scope of this opinion.

*Id.* at 1152.

The Alaska statute, like Texas', differentiates between individuals convicted of aggravated or multiple offenses and those convicted of a single nonaggravated offense.

In dissent, Justice Stevens explained that he believed "registration and publication are permissible components of the punishment for this category of crimes, however, for those convicted of offenses committed after the effective date of such legislation, there would be no separate procedural due process violation so long as the defendant is provided a constitutionally adequate trial." *Id.* at 1158. The Texas statute excludes and does not provide procedural protection for those who were convicted after 1970 and/or before the imposition of the Act. In addition, there exists no rational connection between the duration of the reporting requirements for some, but not for others.

In context of the case at bar, Defendant is denied his right to procedural due process because the statute does not allow a means by which Defendant can carve an exception to the strict contours of the statute. Such restrictions deny Defendant his rights under the Texas Constitution (Article 1, Section 10, Texas Constitution) and the United States Constitution (due process, substantive and procedural). In addition, Defendant contends that his

equal protection rights are violated herein because of the contours and restrictions imposed.

## V. PRAYER

7. Applicant prays that this Court issue a writ of habeas corpus, set this application for hearing, and enter an order granting Applicant relief, thereby discharging him from the reporting obligation in light of the violation of Applicant's substantive due process rights, equal protection and ex post factor application of the statutory provisions in question.

DATE: April 17, 2005.

Respectfully submitted,

/s/ Anthony P. Griffin

ANTHONY P. GRIFFIN
A GRIFFIN LAWYERS
1115 MOODY
GALVESTON, TEXAS 77550
409.763.0386
1.800.750.5034
FACSIMILE NO. 409.763.4102

STATE BAR NO. 08455300

ATTORNEYS FOR APPLICANT
STEPHEN LOUIS STARK

CERTIFICATE OF SERVICE

This is to certify that on this the 28th day of March, 2005 the foregoing Application for Writ of Habeas Corpus was certified mail, return receipt requested, to opposing counsel, to-wit:

BILL R. TURNER
DISTRICT ATTORNEY
OFFICE OF THE DISTRICT ATTORNEY
BRAZOS COUNTY COURTHOUSE
300 EAST 26th STREET
BRYAN, TEXAS 77803

CERTIFIED MAIL, RRR NO. 7002 2030 0003 7359 5204

/s/ Anthony P. Griffin
ANTHONY P. GRIFFIN

**OATH OF APPLICANT**

STATE OF TEXAS §
§
COUNTY OF Galveston §

**BEFORE ME**, the undersigned authority personally appeared STEPHEN LOUIS STARK, known to me to be the person whose name is subscribed to the following instrument and having been duly sworn upon his oath, deposes and states as follows:

"My name is STEPHEN LOUIS STARK. I am over (18) years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated:

The allegations contained in the attached application for writ of habeas corpus are true and correct, according to my belief. I also swear and affirm that the attachments are true and correct copies of documents tendered to me during the above proceedings and represent what they purport to represent.

Further, Affiant saith not.

/s/ Stephen L. Stark
Signature

/s/ Stephen L. Stark
Printed Name

SUBSCRIBED AND SWORN TO before me this 18th day of April, 2005.

/s/ Linda Griffin
NOTARY PUBLIC IN AND FOR STATE OF TEXAS

[SEAL]

MY COMMISSION EXPIRES:
4.22.07

BRAZOS COUNTY OFFICE OF THE SHERIFF
CHRISTOPHER C. KIRK

[LOGO] CLYDE COLLINS,
CHIEF DEPUTY
WAYNE DICKY,
JAIL ADMINISTRATOR

300 E. 26TH ST. SUITE 105
BRYAN, TEXAS 77803-5359

**Affirmation of Sex Offender Status**
**Brazos County Sex Offender Compliance Unit**

I, Stephen Stark, am an individual who has a reportable conviction or adjudication who has been previously notified pursuant to Chapter 62, Texas Code of Criminal Procedure, "Sex Offender Registration Program" of my duty to register and thereafter verify registration.

SLS (Initial) I declare under penalty of perjury that my registration has already been completed and I understand pursuant to Article 62.02 of the Texas Code of Criminal Procedure, **I must verify my registration information annually/every 90 days.**

SL (Initial) I further understand pursuant to article Texas Code of Criminal Procedure that if I intend to change my address, I shall no later than the seventh day (7th) before the intended change, **report in person** to the law enforcement authority with whom I last registered and to the juvenile probation officer, community supervision and correction department officer, or parole officer supervising me and provide both the authority and the officer with my anticipated move date and new address. I further understand that if I do not move on or before the anticipated move date or I do not move to the new address provided to the authority, I shall report to the local law enforcement authority with whom I last registered not later than the

seventh (7th) day after the anticipated move date and provide an explanation regarding any changes in the anticipated move date and intended move date and report to my supervising officer in person. I understand if I do change my address, I shall not later than the seventh (7th) day **after** changing my address report **in person** to the local law enforcement authority in the municipality or county in which my new residence is located and provide the authority with proof of identity and residence.

SLS (Initial) I further understand if I reside in the state of Texas, and am: (a) employed or carry on a vacation [sic] in another state, or (b) am a student in another state, and the other state has a sex offender registration requirement, I shall not later than the tenth (10th) day after the date on which I begin to work or attend school **in the other state, register** with law enforcement authority, identified by the Department of Public Safety in that state to receive registration information. (You are employed or carry on a vacation [sic] if you work on a full time or part time basis for a consecutive period exceeding fourteen (14) days or an affregated period exceeding thirty (30) days in a calendar year, whether you work for compensation or for governmental or educational benefit. You are a student if you enroll in any educational facility, including public or private primary or secondary school, including a high school including or alternative learning center; including a college, university, community college, or technical or trade institute.)

SLS (Initial) I further understand, If I on at least three (3) occasions during any month spend more than 48 hours in a municipality or county in this state in which I am NOT registered, I must before the last day of that month report that fact to the local law enforcement authority of the

municipality or county in which I was a visitor. I shall provide the local law enforcement authority with all information required under Article 62.02(b) of the Texas Code of Criminal Procedure, the address of any location in the municipality or county at which I was lodged during the month and a statement as to whether I intend to return to the municipality or county during the next month.

SLS (Initial) I further understand if I move to another state that has a registration requirement for sex offenders, I shall not later than the tenth (10th) day after the date I arrive in the other state, I must register with the law enforcement agency that is identified by the Department of Public Safety as the agency designated by that state to receive registration information.

SLS (Initial) I further understand if I am **discharged from supervision** I shall report to the local law enforcement authority any change in my physical health status or job status not later than the seventh day after the date of change. My job status "changes" if I leave my employment for any reason, if I remain employed by an employer but I change location at which I work, or I begin employment with a new employer.

SL (Initial) I understand that failure to comply with any of the foregoing requirements is a felony offense in the State of Texas.

Stephen L. Stark

I, Stephen L. Stark, fully understand the obligations set forth and explained to me on this day.

| | |
|---|---|
| /s/ Stephen L. Stark | 2-13-01 |
| Offenders Signature | Date |

| /s/ K. Elliott Inv. | 2-13-01 |
| --- | --- |
| Notifying Officials Signature/Title | Date |

If you have questions in regards to the Affirmation you can contact Investigator Kenny Elliott at 979-361-4190 Monday thru Friday from 7:30AM to 2:00PM.

Revised 9/21/00

TEXAS SEX OFFENDER REGISTRATION PROGRAM

NOTIFICATION STATEMENT

CHAPTER 62, CODE OF CRIMINAL PROCEDURE

You have a reportable conviction or adjudication; a deferred adjudication; an adjudication of delinquent conduct; or have been court ordered as a condition of supervised release on probation, parole or mandatory supervision to register as a sex offender in the state of Texas in accordance with CHAPTER 62, of the Texas Code of Criminal Procedure. The notifying official or representative shall complete the Sex Offender Pre-Release Notification form for those offenders who meet the criteria for registration. Offenders may be ready for release from an incarcerated setting or may be currently on supervision in the community. ***The offender is required to initial beside each applicable checked section and at the bottom of each page signifying the applicable section and page have been thoroughly reviewed. In addition the releasing authority will initial at the bottom of each page signifying notification has been made and offender duly informed.***

As required under Chapter 62, C.C.P., you are further being notified and advised of the following requirements and conditions:

Your duty to register (Article 62.02, C.C.P.)

| | | |
|---|---|---|
| /s/ SLS X | X | Is based on a reportable conviction or adjudication, a deferred adjudication or an adjudication of delinquent conduct based on a disposition occurring in Texas |
| _____ | ___ | Is based on a reportable conviction or adjudication, a deferred adjudication or an adjudication of delinquent conduct based on a disposition under the Uniform Code of Military Justice |

| | | |
|---|---|---|
| _____ | ___ | Is based on a reportable conviction or adjudication, a deferred adjudication or an adjudication of delinquent conduct based on a disposition under Federal Law |
| _____ | ___ | Is based on a reportable conviction or adjudication, a deferred adjudication or an adjudication of delinquent conduct based on a disposition under laws of another states that have elements similar to an offense which requires registration in Texas |
| _____ | ___ | Is based on a special condition of release to community supervision |

Expiration of your duty to register: (Article 62.12 C.C.P.)

| | | |
|---|---|---|
| /s/ SLS | X | Does not expire (You must register for the remainder of your life) |
| _____ | ___ | Expires 10 Years After Discharge from Supervision or Incarceration, whichever is later |
| _____ | ___ | Expires At time of discharge, since your duty to register is a special condition of supervised release and not a statutory requirement. |

You must register: (Article 62.02, C.C.P.)

| | | |
|---|---|---|
| _____ | ___ | Within 7 days of the date of this notice, you shall verify initial registration with the law enforcement agency having jurisdiction over your place of residence, providing proof of identity AND proof of residence |
| /s/ SLS | X | You must obtain a Special Drivers License or Personal Identification Card from the Department of Public Safety (Article 62.03, C.C.P.) *effective date 09-01-2000.* |

Within 30 days of the date of this notice, you will be sent notice by the Department of Public Safety that your existing Texas drivers license and/or Texas Personal Identification Card will be revoked. You shall re-apply or if you do not have a drivers licence and/or personal identification card, you shall apply for an original drivers licence and/or personal identification with DPS. The drivers licence and/or personal identification will be issued with a 1 year expiration date which must renewed on your birthday each year for the duration of the time you have a requirement for registration as a sex offender and has an initial and yearly renewable fee of $20.00

/s/ SLS X You must notify the appropriate authorities prior to any change of address (Article 62.04, C.C.P.) 7 days prior to any move/change of address, you must notify your supervising officer AND the last registering law enforcement agency of your new address AND anticipated move date. Once you have discharged your sentence, you shall notify the last registering law enforcement agency 7 days prior to any move and provide that agency with your new address AND anticipated move date.

/s/ SLS X You must verify any change of address with local law enforcement (Article 62.04, C.C.P.) Within 7 days of establishing your new address, you must appear in person with the law enforcement agency having jurisdiction over your place of residence, providing proof of identity AND proof of residence.

/s/ SLS — X — You must verify your registration (Article 62.06, C.C.P.)

_____ — ___ — For as long as you have a requirement for registration, you must appear before the appropriate law enforcement agency having jurisdiction over your residence address in accordance to the following time frame as indicated herein:

____ — X — Annually – Not earlier than 30 days before and not later than 30 days after your birthday

____ — ____ — Every 90 days – Not earlier than the 83rd day before and not later than the 98th day of the date of your initial registration

____ — ____ — Annually – Not earlier than the 27th day before and not later than the 33rd day after the date of your initial registration

N/A — ____ — Assignment of Risk Level (Article 62.035, C.C.P.)

*Effective 01-01-2000*: At the time of your release to supervision by a court or a penal institution and prior to your registration, you will be assigned a risk level by the courts or a risk assessment review committee. Based on the criteria presented under this requirement, you have been assigned as a risk level ___. If you have been assigned a risk level 2 and your registration offense was a conviction of or deferred adjudication for an offense under Section 21.11 or 22.011(a)(2), Penal Code, or an adjudication of delinquent conduct for either of these two offenses and the victim of the offense was of the opposite sex and not more than five years younger than you, you may petition the original

authority who assigned your risk level for consideration to be placed in a risk level 3 tier, only upon any address change.

/s/ SLS X You must notify the appropriate authorities of any status changes (Article 62.05, C.C.P.)

While under supervision you shall notify your supervising officer of any changes that affect your supervision. The supervising officer will also notify the appropriate registering law enforcement agency of these and any other changes in you status that affects proper supervision, including re-arrest, re-incarceration or release from supervision. When you are discharged from supervision or incarceration and no longer under supervision; you shall notify the law enforcement agency having jurisdiction over you residence address of any change in your physical health or job status not later than the 7th day after the date of the change. This includes any change in health due to hospitalization as a result of an illness or changes in employment specific to any job locations with the same employer, leave, separation or termination from any employer or beginning work with any new employer.

/s/ SLS X If you are regularly visiting any community while required to register (Article 62.062, C.C.P.)

Anytime, during the duration of your duty to register, that you, on at least three occasions during any month spend more than 48 consecutive hours in a community in this state, other than the community in which you are registered, you must report

your presence to the local law enforcement authority in the community in which you are visiting. You must provide to the local law enforcement all information that is required for registration, including the address of any location you were lodged at during the month and provide to the law enforcement authority a statement as to whether you intend to return to the community during the succeeding month.

/s/ SLS X If you attend school or are employed in another state (Article 62.061, C.C.P.)

Anytime you are attending school or working in another state, while maintaining a permanent residence address in this state, you must register with the appropriate law enforcement agency having jurisdiction over the school or employment in that state IN ADDITION to maintaining your registration requirements in Texas for the duration of your requirement to register in Texas.

/s/ SLS X Public Access to your registration information (Article 62.08, C.C.P.)

Information regarding your registration is available to the public on inquiry to a law enforcement agency, either in writing or by access via the Internet, and shall include the following:

- Your full name
- Age or date of birth
- Sex
- Race
- Height
- Weight

- Hair Color
- Shoe Size
- Your full numeric address or physical address if a numeric address is not available, including city and zip code
- The description of the offense which requires registration
- Age of victim
- The disposition received for this offense and the date of your discharge or release from supervision
- The length of your requirement for registration
- The status of your (to include probation, parole or discharge)
- Your requirement for verification (annual, 90-day, 30-day)
- Your assigned risk level; and,
- Your photograph

Information ***NOT*** public includes your home telephone number, employer, occupation, social security number, driver's license number or any information that would identify the victim of your offense.

/s/ SLS X Community Notification Requirements (Article 62.03-62.04, C.C.P.)

Information regarding you and your registration will be released to the community IF the victim of your offense was a child under the age of 17. This will occur upon your initial registration and each time you change address. This release will be made as a newspaper notification and/or a notification to public and private schools in the community wherein you reside under the following conditions:

*Newspaper Notification* –
NOT REQUIRED/NOT ELIGIBLE FOR NEWSPAPER NOTICE

- Convictions or adjudication's occurring prior to 09-01-1995 (including out of state)
- Deferred adjudication's entered between 09-01-1955 and 08-31-1997, (including out of state)
- All offenses under Section 25.02, Penal Code (Prohibited Sexual Conduct), REGARDLESS OF DISPOSITION DATE OR DISPOSITION TYPE (including out of state)
- All dispositions occurring prior to 09-01-1999 for offenses under Section 20.02, 20.03 or 20.04, Penal code, where an affirmation finding was made that the victim or intended victim of the offense was a child under the age of 17. This would include any offense filed under Chapter 15, Penal code (including out of state)
- Dispositions under the Uniform Code of Military Justice for any offense requiring registration that was entered prior to 09-01-1997
- Dispositions under federal law for any offense requiring registration that was entered prior to 09-01-1999
- ALL JUVENILE OFFENDERS ARE EXEMPT FROM NEWSPAPER NOTICE

REQUIRED/ELIGIBLE FOR NEWSPAPER NOTICE

- Convictions of adjudication's occurring on or after 09-01-1995 (except 25.02, Penal Code), including any filed under Chapter 15, Penal Code
- All deferred adjudication's entered on or after 09-01-1997 (except 25.02, Penal Code), including any filed under Chapter 15, Penal Code
- All out of state convictions occurring on or after 09-01-1997 (except 25.02, Penal code and deferred adjudication's), including any attempt, solicit or conspire to commit

- All dispositions under the Uniform Code of Military Justice occurring on or after 09-01-1997
- All disposition [sic] under 10.02, 20.03 or 20.04, Penal code, where there is an affirmative finding that the victim or intended victim was a child under the age of 17, entered on or after 09-01-1999, including any filed under Chapter 15, Penal code
- All disposition [sic] under federal law occurring on or afer 09-01-1999

*The information provided to the newspaper shall include*:

- Your full name, including age and gender
- Your numeric street address or physical address if a numeric address is not available, including your city and zip code
- A brief description of your offense, including the age of your victim, and
- Either a recent photograph of you or the Internet address of a website on which your photograph is accessible to the public free of charge; and
- Your assigned risk level

In addition, your publication will be made by the law enforcement agency having jurisdiction over your address. This publication will appear in the newspaper of greatest paid circulation in the county in which you reside. It will be published in English and Spanish, and it will be published twice in successive weeks, AND you must pay for any cost associated with the publication.

*School Notification*
REQUIRED

If you [sic] requirement for registration is based on any offense where the victim or intended victim of the offense was a child under the age of 17, information regarding you will be provided to the Superintendent of Public Schools and the Administrator of Private Schools in the community wherein

you are residing. Information included in this notice shall include any information the law enforcement authority deems is necessary to protect the public and will include all information that is public information under Article 62.08, C.C.P. Upon receipt the Superintendent or Administrator will distribute the information received to the appropriate authorities within the school, including police and security personnel, principals, nurses and counselors. In addition, if you are a juvenile offender and a

/s/ SLS ___ X ___ If you move from Texas, you must register with the appropriate law enforcement agency in any state having jurisdiction over your address or location (THIS IS FEDERAL LAW) for the duration of your requirement to register in Texas or as required by the state having jurisdiction over your address or location in that state.

/s/ SLS ___ X ___ Failure to comply with Registration (Article 62.10, C.C.P.)

Any failure to comply with the requirements of sex offender registration is a felony offense and may result in the revocation of any release to community supervision.

Based on your registering offense or condition of supervised release, any failure by you to comply with the requirements of this Act will result in a criminal offense of:

_____ ___ 4th Degree Felony (Registration requirement based on non-sexually violent offense conviction or as a condition of supervised release) {10 year post-discharge registration requirement}

| | | |
|---|---|---|
| /s/ SLS | X | 3rd Degree Felony (Registration requirement based on 1 conviction for a sexually violent offense) {Lifetime offense or based on a requirement of civil commitment} {Lifetime registration requirement} |
| | | 2nd Degree Felony (Registration requirement based on 2 or more convictions for a sexually violent offenses) {Lifetime registration requirement} |

Personally appearing before me this date, 2/13/01, is Stephen Stark a sex offender who has a reportable conviction or adjudication who has been duly notified of the responsibility to register and verify registration with the Sex Offender Registration Program, as defined in Article 62.03, Code of Criminal Procedure.

I, Stephen L. Stark, understand the obligations as defined above and explained to me this date:

| | |
|---|---|
| /s/ X Stephen L. Stark | 2-13-01 |
| Offender Signature | Date |
| /s/ K. Elliott, [Illegible] | 2-13-01 |
| Notifying Official Signature/Title | Date |

REFUSAL TO SIGN THIS STATEMENT

On, ___/___/___, is _____, who is a sex offender with the reportable conviction or adjudication, personally appeared before me and one witness and was duly informed of the responsibility to register with the Sex Offender Registration Program as defined in Chapter 62, Code of Criminal Procedure. We certify that the above names and identified offender has been informed of the program requirements and the offenders has REFUSED

TO SIGN THIS FORM acknowledging such notification.

| | |
|---|---|
| Notifying Official Signature/Title | Date |
| Witness signature/Title | Date |

/s/ SLS **Initials of Offender**

/s/ KEE **Initials of Releasing Authority**

**COLLEGE STATION POLICE DEPARTMENT**

**SEX OFFENDER COMPLIANCE UNIT**

To: Stephen Louis Stark

This letter is to inform you that as of September 1, 1999 under Article 62.06 Subsection (b) of the Texas Code of Criminal Procedure you are required to verify your annual registration on your birth date. You will be able to verify your registration 30 days before your birth date and 30 days after that date to complete your annual verification. Under Article 62.10 if you have a life time requirement to register and fail to verify annual registration, or fail to change your address as required by law it will be a 3rd degree felony.

**(1) VERIFY REGISTRATION**
**(2) NEW ANNUAL VERIFICATION DATE** 02/03/2000

If you have any questions, I will be glad to assist you in staying in compliance with the Sex Offender Registration Program. Contact me at 764-3623 or 764-3616, Monday through Friday between 8 a.m. and 5 p.m.

Respectfully,
/s/ A.W. Kunkel
Detective A. Kunkel

TRN: _____ TRS: _____ BAC: _____ SID: _____ Arresting Agency/Date: _____ DPS Offense Code: _____

NO. 22,876-85

THE STATE OF TEXAS )( IN THE 85th Judicial District
VS. )( OF
Stephen Louis Stark )( BRAZOS COUNTY, TEXAS

ORDER DEFERRING FURTHER PROCEEDINGS AND PLACING DEFENDANT ON COMMUNITY SUPERVISION

On March 23, 1995, the above entitled and numbered cause being called for trial, the State appeared by Assistant State's Attorney Beth Ann Smith, and the defendant appeared in person and (by Counsel Jim James) (knowingly, intelligently, and voluntarily waived the right to be represented by counsel after having been advised by the Court of the dangers and disadvantages of self representation), and both parties announced ready for trial. The defendant, in person and in writing, in open court waived the right of trial by jury; such waiver was consented to by the Court and by the attorney representing the State, and is now entered of record on the minutes of the Court. The defendant pleaded (~~guilty~~) (nolo contendere) to the charge contained in the (~~information~~) (indictment). [JB]

Thereupon the defendant was admonished by the Court as follows: of the range of punishment attached to the offense; of the fact that any recommendation of the State as to punishment was not binding on the Court; that if the punishment assessed by the Court did not exceed the punishment recommended by the State and agreed to by

the defendant and defense counsel, the Court must give its permission for the defendant to prosecute an appeal as to any matter in the case, except for those matters raised by written motions filed prior to trial; that if the Court rejected the plea agreement the defendant would be allowed to withdraw the plea, and any statement made by the defendant at the hearing would not be admissible against the defendant, nor would the fact of the guilty/nolo contendere plea be admissible against the defendant in any subsequent criminal proceeding; and that if the defendant is not a citizen of the United States a plea of guilty or nolo contendere for the offense charged may result in deportation, exclusion from admission to this country, or the denial of naturalization under federal law.

The Court admonished the defendant of the possible consequences of a violation of community supervision in the event that the Court finds that the evidence substantiates the defendant's guilt of the offense charged and defers such a finding of guilt, such consequences including: upon allegation of a violation of community supervision the defendant may be arrested and detained; no appeal may be taken from the Court's determination to proceed with an adjudication of guilt; and after adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and appeal continue as if the adjudication of guilt had not been deferred.

The defendant, in open court, waived in writing the appearance, confrontation and cross examination of witnesses; consented to the stipulation of evidence and the introduction of evidence by affidavits, written statements of witnesses, and any other documentary evidence; and such waiver and consent were approved by the Court in

writing and filed in the papers of this cause. It plainly appearing [sic] to the Court that the defendant was mentally competent and that the plea was freely and voluntarily entered, said plea was accepted and entered of record.

The Court, having heard the defendant's plea, the evidence submitted, and argument of counsel, found that the evidence substantiates that the defendant is guilty of the offense of indecency with a child, a (~~Illegible~~)(felony), and that said offense was committed on [Illegible]. However, the Court after due consideration is of the opinion that the best interests of society and the defendant will be served by deferring further proceedings in this cause and placing the defendant on community supervision under the supervision of the Court.

It is therefore ordered that further proceedings in this cause be deferred without entry of a judgment of guilt against the defendant, and that the defendant be and is hereby placed on community supervision on April 27, 1995, for a period of five (5) years, beginning on this date, under the supervision of the Court and the duly appointed and acting community supervision officer of Brazos County, Texas, provided that the defendant shall comply with the conditions of community supervision attached hereto: [BCM]

~~X~~ (14) Perform ~~340~~ hours of community service in the Brazos CORPS Project (_____), said community service shall be performed at a rate of 8 hours per month, beginning in the month next following entry of this order;

___ (15) Report to the Brazos Count Sheriff's Department to serve _____ days in the (Brazos County Jail) (State Jail facility) as per order filed;

___ (16) Within 30 days of the date of this order submit to an educational/vocational evaluation as directed by your supervision officer, and participate in any program recommended by that evaluation. This includes any adult learning program, a program teaching persons to speak and/or read the English language, adult basic education, GED classes and certificate acquisition, parenting classes, drug education, vocational programs, and/or job search skills classes. Do not terminate any such program without the consent of the Court or the service provider in charge of your case;

___ (17) Within _____ days of the date of this order you will obtain a valid Texas driver's license and liability insurance;

___ (18) Within ten days of the date of this Order contact the Attorney General's Office to apply for child support enforcement services and/or legitimize your child(ren), and cooperate with efforts to obtain support for your child(ren);

___ (19) Within 30 days of the date of this order you will compose, write, and submit to your supervision officer a letter of apology addressed to _____, the victim of this offense, in care of this Court;

___ (20) During the term of community supervision you will not use nor be a signatory to a checking account;

___ (21) Submit to a curfew and be home by _____ or within 30 minutes of the end of night employment, whichever is later;

X (22) As an alternative to incarceration, you are placed in the Intensive Probation Program;

X (23) Because of the serious nature of the instant offense you will be placed on ( ) intensive supervision, or on the specialized caseload for: ( ) chemically dependent persons; ( ) substance abusers; (XX) sex offenders; ( ) SAFPF; ( ) _____, effective immediately, for a period not to exceed two years. During this period you may be required to report on a weekly basis;

X (24) Pay to the BCCSCD a $5.00 fee per month, every month of the community supervision term, for the sexual assault program established in the Health and Safety Code, payable on the first day of every month, beginning in the month next following entry of this order;

X (25) In accordance with the Texas Code of Civil Statues, you are required to register with the appropriate law enforcement authority in the municipality (incorporated town or city) or county where you reside or intend to reside for more than seven days. Registration must be made within seven days following the arrival in the municipality or county, and proof must be provided to your supervision officer within 30 days after you are required to register.

April 27, 1995

/s/ J.D. Langley
Presiding Judge

85th Judicial District

I acknowledge that I have received a copy of my conditions of community supervision, that a supervision officer of

Brazos County has explained the conditions of my community supervision, and that I understand them.

4/27/95
Date

/s/ Stephen Stark
Defendant

/s/ [Illegible]
Community Supervision Officer

| Right Thumbprint in Court | Right Thumbprint After Court |
| --- | --- |
| Date/Initials: [Illegible] 4/27/95 | Date/Initials: [Illegible] 4/27/95 |

NO. 22,876-85

THE STATE OF TEXAS )( IN THE 85th Judicial District
VS. )( OF
Stephen Louis Stark )( BRAZOS COUNTY, TEXAS

## CONDITIONS OF COMMUNITY SUPERVISION

In accordance with Article 42.12 of the Texas Code of Criminal Procedure, you have been placed on community supervision on April 27, 1995, for a period of five (5) years, for the offense of indecency with a child. It is the order of the Court that you comply with the following conditions of community supervision:

(1) Commit no offense against the laws of this State or any other State or of the United States or of any governmental entity, and report to your community supervision officer within 48 hours if arrested or questioned by a law enforcement officer;

(2) Report to the supervision officer at the Brazos County Community Supervision and Corrections Department as directed by the Court and your supervision officer, at least once each calendar month, beginning immediately and continuing until you are discharged from community supervision, and obey all rules and regulations of said department;

(3) Avoid injurious and vicious habits, refrain from using alcoholic beverages to excess, and abstain from the use of any harmful substance, narcotic drug, or other controlled substance in any form – except as prescribed by a licensed physician for legitimate medical purposes; and at the request of your supervision officer you will freely cooperate

and voluntarily submit to medical and/or chemical tests and examinations for the purpose of determining whether you are using, or are under the influence of alcohol, narcotic drugs, or any other controlled substance;

(4) Permit your supervision officer to visit you at your home or elsewhere; report to your supervision officer any change of address or marital status within 48 hours; and remain within Brazos County, Texas, (_____) unless you have first received the written permission of the Court to leave the county;

(5) Work faithfully at lawful employment and notify your supervision officer within 48 hours of any change in said employment; support your dependents that you now have or that you may acquire during the term of this community supervision; and report the sources and amounts of all income or money received and all debts and expenditures to your supervision officer as directed;

(6) Avoid persons and places of harmful and disreputable character, including but not limited to, knowingly or voluntarily associating with any person previously convicted of a crime, or being present at any location where a criminal act is being committed; and do not enter into any agreement to act as "informer", or special agent for any law enforcement agency;

(7) Pay a fine, if one be assessed, and the costs of Court in one or several payments; in addition, pay appointed attorney fees, and make restitution in any amount the Court shall determine, to wit: $ 3,282.00 restitution, $_____ attorney fees, $ 97.50 court costs, $_____ fine, ($5.00) (_____) Crime Stoppers fee, and $_____ substance abuse evaluation fee. The unpaid total of $ 3,394.50 shall be paid in equal monthly installments

of $ 40.00 payable on the first day of every month, beginning in the month next following entry of this order and continuing until paid in full;

(8) Pay to the Brazos County Community Supervision and Corrections Department a supervision fee of $40.00 per month, every month of the community supervision term, payable on the first day of every month, beginning in the month next following entry of this Order;

And furthermore, during the term of this community supervision you shall strictly follow and observe the following marked terms and conditions:

___ (9) Abstain from the use or possession of alcoholic beverages in any form, and do not go on any premises where alcoholic beverages are served;

___ (10) Within 180 days of the date of this order you will enroll in, pay for, and successfully complete an alcohol education program authorized by Article 42.12, Texas Code of Criminal Procedure, and designed to rehabilitate (repeat) driving while intoxicated offenders;

___ (11) Within 30 days of the date of this order you will have an alcohol ignition interlock system installed in your vehicle for a period of _____ months/years, at your own expense. In addition, you will only operate a vehicle equipped with an alcohol ignition interlock system during the specified time period, unless driving a company owned vehicle with your conviction being known by your employer.

___ (12) Within 180 days of the date of this order you will enroll in, pay for, and successfully complete a drug offender education course authorized by Article 6687b of Vernon's Texas Civil Statutes;

X (13) Submit to a ~~psychiatric~~/psychological/~~substance abuse~~ evaluation or screening at the direction of your supervision officer within 60 days of the date of this order; participate in and pay the costs of any treatment program recommended by said evaluation, including attendance at Alcoholics Anonymous or Narcotics Anonymous meetings, and do not attempt to terminate said treatment without the written consent of the treatment team in charge of your case. The community supervision officer is authorized to share the contents of the presentence report in this case with the service provider;

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NO. 22,876-85

THE STATE OF TEXAS )( IN THE 85th Judicial District
VS. )( OF
Stephen Louis Stark )( BRAZOS COUNTY, TEXAS

ADDITIONAL CONDITIONS
OF COMMUNITY SUPERVISION

It is the order of the Court that you comply with these additional conditions of community supervision:

XX (26) You will not go to or loiter around any park, swimming pool, public school, or other recreational area where children are likely to be present;

XX (27) You will not attend parties, activities, or functions that are the primary focus of children;

XX (28) You will not associate with any child below the age of 17 unless in the presence of another adult at all times;

XX (29) You will not seek or gain employment, or perform any volunteer work, with any firm or business whose function includes the provision of services to children;

XX (30) Pursuant to Article 42.12, Section 14(B), of the Texas Code of Criminal Procedure, you shall pay all the reasonable costs incurred up to 365 days from the date of this Order by or on behalf of the victim(s), for psychological counseling made necessary by this offense; the Court having found that you are financially able to make said payments.

April 27, 1995

/s/ J.D. Langley
Presiding Judge

85th Judicial District

I acknowledge that I have received a copy of my conditions of community supervision, that a supervision officer of Brazos County has explained the conditions of my community supervision, and that I understand them.

4/27/95
Date

/s/ Stephen Stark
Defendant

/s/ [Illegible]
Community Supervision Officer